

## BOOK REVIEW

DEMOCRATIC DICTATORSHIP: THE EMERGENT CONSTITUTION OF CONTROL, by Arthur S. Miller. Westport, Conn.: Greenwood Press, 1981, pp. xvi + 268, notes & index. \$29.95.

The book reviewed here is predicated on the assertion that "humankind is in the midst of an immense climacteric . . . not merely a crisis, but something far deeper . . . Survival has become the problem, survival of the nation and of that system of rights and privileges that is called our constitutional order."<sup>1</sup>

The author says that the climacteric (major turning point or critical stage) challenges the ability of American government, under its present constitutional system, to deal with a combination of individual crises—inflation, unemployment, energy shortages, nuclear proliferation, a shrinking planet, dwindling resources, immersion in foreign wars, a burgeoning population, and an industrial machine that finds it increasingly difficult to compete in the world market.

The basic theme of the essay is that governmental powers will increase in order to maintain the survival of the State and that repression will become routine—a repression which will be accepted by the American people—thus the title, *Democratic Dictatorship*.

The author reviews the development of American constitutional law as background for his vision of the system of the future. He says that Americans have gone through three constitutions and are now entering a fourth.<sup>2</sup> The first constitution consisted of the Articles of the Confederation, which were effective from 1776 to about 1787. The confederacy maintained the decentralization of government and stressed that the thirteen states were free and independent.

A structural revolution soon took place in the formation of the 1787 Constitution which, on its face, purported to balance federal and state power, but which, in fact, set the stage for national domination and a new superstate.

In the 1930's, a third "*Constitution of Powers*"<sup>3</sup> was born which allowed federal governmental intervention into the economy. "Keynesian economics" was constitutionalized by the Supreme Court's

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1. *Prologue* to A. MILLER, DEMOCRATIC DICTATORSHIP: THE EMERGENT CONSTITUTION OF CONTROL at xiii-xiv (1981).

2. A. MILLER, *supra* note 1, at 187-88.

3. *Id.* at 187.

delayed acceptance of New Deal legislation.<sup>4</sup> This was accomplished by judicial interpretation without formal amendment of the Second Constitution of 1787. In the same period, the Supreme Court began actively to apply the Bill of Rights in order to give protection to ordinary men and women.

In each of these three phases of the American constitution, the author finds that the first value consistently has been the survival of the state, regardless of whether the crucial decisions have come from the executive, the legislative or the judicial branch of the federal government. He declares that this basic tendency of government is an ancient one, reflected in the writings of Machiavelli, Hobbes and Holmes and exemplified by the consistent rally to the flag by all agencies of government when contests between individual rights and the national interests involve matters deemed important to national security.<sup>5</sup>

It is from this historic tendency by those in power to give primary emphasis to preservation of the state that Professor Miller sees the emergence of a fourth American constitution: the *Constitution of Control*.<sup>6</sup> In a period of great crises—our present climacteric—he is confident that any individual rights in serious conflict with national security will take second place. This conclusion of his analysis of American constitutional history is supported by a review of classic Supreme Court cases concerning the American Indian,<sup>7</sup> the Japanese-Americans of World War II,<sup>8</sup> the trial of military captives,<sup>9</sup> and other instances involving official decisionmaking where the national security was deemed to be in critical competition with personal rights. He suggests that the idea of a truly limited government can be found only in the formal Constitution of 1787—the “Constitution of the books”<sup>10</sup>—and that the reality is that the government is never truly limited when those in power perceive a real threat to the national interest.

Our “economy of abundance” which existed in the 1945-1970 period is rapidly being replaced by the “ecology of scarcity” which exerts strong pressures toward an authoritarian political system.<sup>11</sup> “[A] fourth *Constitution*—that of *Control*—has become a necessity. It is slowly coming into view. Its major prophet is Thomas Hobbes, who wrote *Leviathan* in 1651 . . . . The formal (second) Constitution of 1787 is obsolescent.”<sup>12</sup>

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4. *Id.*

5. *Id.* at 188-92.

6. *Id.* at 188.

7. *Id.* at 89-90.

8. *Id.* at 82-84.

9. *Id.* at 84.

10. *Id.* at 231.

11. *Id.* at 187.

12. *Id.* at 188 (emphasis in original).

The main contours of the emerging Constitution of Control are perceived as follows:

1. "The State—the Corporate State—is the over-arching social reality."<sup>13</sup> The power base of the Corporate State includes private groups, especially business corporations, which the Supreme Court has declared to be constitutional persons. In time the State, too, may be regarded as a "real person."<sup>14</sup>

2. Americans are actually governed by both public and private governments, such as huge multinational corporations; this means that a new form of feudalism is emerging. The individual has become insignificant, except as a member of a group—by having "status."<sup>15</sup>

3. An elite oligarchy will govern the nation. The oligarchy will consist of elected public officials as well as officers and executives of influential private groups and organizations.<sup>16</sup>

4. Representative government is and will be "marasmic" (wasting away). Representation in Congress, even now, relates to different groups, rather than to the "people."<sup>17</sup>

5. The Constitution of Control will carry forward structural alterations in government powers which have already begun under the second and third constitutions. The division of powers in the national government will continue to shift in favor of a strong executive. The movement away from the states toward increasing national power will grow. Foreign and domestic policy will merge, and the privateness of enterprise will be seen as public.<sup>18</sup>

6. National security will be the most important value in the society, and the Welfare State, which he views as a means of buying off social discontent by those in power, may be on a collision course with national security. The personal security of individual Americans will be protected only insofar as those protections also further national security. Individuals will be increasingly bound to the State (public and private governments) through invisible chains, such as pension plans and other techniques to insure minimal economic welfare and domestic order, but human freedoms will diminish as increasing attention is paid to national safety.<sup>19</sup>

7. State socialism will come into effect, though not by that name. Socialistic programs cannot be avoided, in fact, a number of them already exist. Capitalism is in deep trouble. The economic pie will not

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13. *Id.* at 194 (emphasis omitted).

14. *Id.* at 194-95 (quoting Barker, *Translator's Introduction* to O. GIERKE, *NATURAL LAW AND THE THEORY OF THE STATE* at lxxxv (E. Barker trans. single vol. ed. 1958)).

15. *Id.* at 195-96.

16. *Id.* at 198-99.

17. *Id.* at 199.

18. *Id.* at 201-06.

19. *Id.* at 206-07.

get larger with the increase in population and those who share in it will increasingly battle over shares. Economic planning, involving a close partnership between government and business, will grow. The resulting socialism will not be for the poor, except insofar as it is necessary to buy off discontent.<sup>20</sup> The use of technology to control humans through therapeutic rather than punitive means will develop. The permissive society may be one way whereby dissidents are curbed or guided into activities not inimical to the interests of the State. Americans may be "moving into a Skinnerian world in which they 'will [not] know, or care, whether they are being served or controlled, treated or punished, or whether they are volunteers or conscripts. The distinctions will have vanished.'"<sup>21</sup>

8. Secrecy will be central to government under the Constitution of Control. The doctrine of executive privilege, recently affirmed by the Supreme Court in *Nixon I*,<sup>22</sup> has strengthened the concept of secrecy in government. The author supports the idea that "[w]here secrecy reigns, government officials are in a position to rule at virtually their own discretion."<sup>23</sup>

9. Crisis is both a cause and a characteristic of the Constitution of Control because of the increasing inability of either the second or third constitution to meet the problems facing humankind.

Professor Miller declares, "Anyone who believes that the present constitutional order is sufficient to the need is either a madman or a political scientist (or perhaps a lawyer) . . . . The Constitution of Control means that an era of repression is hard upon Americans."<sup>24</sup> He says that in the growing crisis

the choice comes down to this: between "democracy" (however defined) and "dictatorship." . . . [T]he two concepts, outwardly completely inconsistent, are meeting and merging in the Constitution of Control . . . . Dictatorship will come—is coming—but with the acquiescence of the people, who subconsciously want it . . . . We are in for it, deeply and irretrievably, and the sooner we realize it the better; for that realization—and proper action based upon it—provides the only way out.<sup>25</sup>

In the Epilogue of the book, the author observes: "The formal constitutional changes that have become obviously necessary are those that would streamline the governmental structure and make it more efficient. At the same time, provision should be made for minimizing

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20. *Id.* at 209.

21. *Id.* at 208-09 (quoting P. SCHRAG, *MIND CONTROL* xi (1978)).

22. *United States v. Nixon*, 483 U.S. 63 (1974).

23. A. MILLER, *supra* note 1, at 210 (quoting Rourke, *The United States*, in *GOVERNMENT SECRECY IN DEMOCRACIES* 113 (I. Galnoor ed. 1977)).

24. *Id.* at 225-26.

25. *Id.* at 226-27.

intrusions on the freedom and dignity of human personality."<sup>26</sup>

He suggests that vital human forces which shape and mold the Constitution are even more important than the formal instrument. These forces are the environment of the system, and that environment "must be conducive to the realization of the humane values of the 'first' morality—that of the Judeo-Christian tradition."<sup>27</sup>

If the reader comes away with the feeling that Professor Miller has left us high and dry after describing the awesome predicament in which he finds us, it is fair to point out that in his Preface he says that this essay is a preliminary statement designed to probe a portion of the constitutional crisis and that, in a future work, he hopes to "extend the discussion by setting forth ways and means of [bringing about] the type of just society that is the ideal of American constitutionalism"<sup>28</sup> in the face of the climacteric of humankind which he describes in the present volume.

Obviously, an essay that is as imaginative and original as this one cannot escape disagreements. Professor Miller anticipates this, particularly in relation to his conclusions of fact, and it is a tribute to his courage that he lays his predictions on the line. Time will prove him right or wrong. The critic certainly has a host of assertions and conclusions from which to select points of attack, but I doubt that many will deny the stimulating and adventurous qualities which are to be found in this wide-ranging discussion.

One cannot read this book without intellectual enrichment; whether the reader reaches agreement or disapproval, reading *Democratic Dictatorship* will be a rewarding investment of time. It should be especially valuable for current students of constitutional law because of the manifold ways in which Professor Miller has related old cases and principles to present-day circumstances. For the seasoned student of constitutional law, it is a fresh look at familiar faces.

I strongly recommend this book. A reader cannot complete it without revisiting and rethinking many of the familiar "truths" of American society. In a way, the analysis is a reconsideration of all the traditional indoctrination we have received growing up in the American culture and environment. Professor Miller gives us an opportunity to see the other side of American constitutional history and law. Seeing the other side—in those rare instances when we choose to look—is always educational.

As far as the conclusions of the book are concerned, I must confess that I am addicted somewhat to the kind of Micawberism which Professor Miller regards as dangerous in the face of crisis. At the same

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26. *Id.* at 233.

27. *Id.*

28. *Preface* to A. MILLER, *supra* note 1, at ix-x.

time, I can never say that I haven't been warned. Miller has warned us all, and the warning itself may help us to avoid possible disaster. Furthermore, I look forward to the volume in which, it is hoped, he will describe ways around the present collision course between the security of the state and the freedom of individuals.

*William Ray Forrester\**

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\* Professor of Law, Hastings College of the Law, University of California. A.B., 1933, University of Arkansas; J.D., 1935, University of Chicago; LL.D., 1963, University of Arkansas.

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