



12-1-1964

## Book Review

Donald P. Kommers

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Donald P. Kommers, *Book Review*, 40 Notre Dame L. Rev. 132 (1964).

Available at: <http://scholarship.law.nd.edu/ndlr/vol40/iss1/8>

This Book Review is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact [lawdr@nd.edu](mailto:lawdr@nd.edu).

## BOOK REVIEW

**THE AMERICAN LEGISLATIVE PROCESS: CONGRESS AND THE STATES.** By William J. Keefe and Morris J. Ogul. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1964. Pp. 498. \$7.95 — This book is not an original study of the legislative process. The authors have no pretensions of perfecting methodological inquiry or of contributing to the theory of legislative behavior. Rather, this is a broad survey analysis of the current literature of the legislative process. The character of legislative behavior as well as the limitations and deficiencies of state legislatures and Congress, with the emphasis upon the latter, are discussed in considerable depth. Professors Keefe and Ogul draw upon an enormous body of disparate writing on the legislative process which they have compressed into a very readable and well-structured volume, for this book is a distillation of just about everything of any significance that has been said in the literature of legislative behavior. It is one of the most comprehensive volumes now available on the subject.

While very broad in scope this book is disciplined in perspective and organization, and is meticulously documented without being ponderous. The authors emphasize the findings of recent behavioral and empirical studies, but they have not neglected the insights of historical, institutional, or normative analysis. In fact, they insist upon the interdependence of all approaches for an enlightened view of the legislative process. And while all points of view have been accorded a fair hearing and are treated with maximum objectivity, the authors are not reluctant to venture an informed judgment when the occasion warrants.

This book was written for students of political science, but it is no less valuable for lawyers. To talk about the legislative process, which is obviously political, is really to talk about one important aspect of the legal process, the realization of which would hopefully promote mutuality of interest and interdisciplinary endeavor among lawyers and political scientists. Both have a vested interest in enlarging their understanding of the political system which produces our public law. Law is not a homogeneous quality. The political scientist must come to realize that law is an expression of social and political values, just as the lawyer must realize that it is the product of many social forces which converge in the legislative arena. The point is that the pattern and style of the convergence should tell us as much about the nature of our law as it does about the nature of our political system. Thus law cannot be viewed realistically apart from the law-making process. Though the authors are not concerned with the meaning of law, a sharper awareness of this elemental fact is one of the salutary by-products of having read this book.

But neither does the legislative process have any real meaning apart from the context in which it operates, namely the entire political system. This is the major assumption of the book and constitutes the central thesis around which data from a large amount of both published and unpublished material is marshalled and analyzed. The political system within which the legislature operates is viewed as a complex of power relations, for the perspective of the authors is governed by a healthy awareness of the perennial reality of social conflict and the ubiquity of the power-seeker. Legislatures are not agencies of revealed truth nor for that matter are they frameworks of reasoned deliberation, as conventional wisdom would have it. Feeling and emotion have as much to do with the legislative process as rational argument. The legislature is democracy's way of resolving conflict between antagonistic interests and of trying to bring our public law into approximate accord with the policy preferences of the majority. It is a human institution operated by human beings in a very human way.

Legislatures are complicated institutions because legislators are complicated men. For one thing, as Keefe and Ogul document very well, they come from a variety of backgrounds, assume a variety of roles in the legislature, and hold differing

conceptions of the nature of representation, all of which influence behavior. Sometimes the legislator acts as a referee in the struggle for power between vested interests on the legislative battlefield;<sup>1</sup> at other times he acts as broker or conciliator in negotiations between political interests; occasionally he assumes the role of statesman or spokesman for the public interest, especially when he can politically afford to sit back and take the "broad" view. But more often than not, he is a *participant* in the legislative battle at every stage of an involved and complicated process of decision-making. He oscillates between resisting, balancing, and supporting the pressures that impinge upon the legislature and originate with political interest groups, party organizations, the presidency, the bureaucracy and the judiciary.

While nearly one-half of the book deals with the pattern of interplay between the legislature and these official and unofficial agencies, several interesting chapters are devoted to the legislature's internal power structure. The legislature is conceived as a political system in miniature. Keefe and Ogul indicate that "knowledge of the legislature's legal-constitutional structure, its formal powers, and its method of organization and operation is basic to understanding the legislative process" for the latter "intrude on the behavior of the legislators and affect the output and effectiveness of the legislature."<sup>2</sup> The authors point out how the formal institutional context — it is emphasized that this context includes informal norms of behavior and power centers as well as formal rules and recognized positions of power — within which legislative politics are carried on, hinders some contestants for power while it helps others. In the game of politics there is usually no equal starting line. The difficulty is that any change in the rules invariably involves shifts in political advantage and access to centers of influence. For example, the practice of unlimited debate in the United States Senate, the practices of the Rules Committee in the House of Representatives, the seniority rule in the selection of committee chairmen, and other kindred procedural devices, tend to give inordinate political leverage to conservative and rural interests as they hold at bay those interests pressing for social and political change. The chief objection, of course, to the current institutional context in Congress is that it lodges political control in a minority and is therefore undemocratic.

In addition to chapters which deal exhaustively with the committee system and decision-making on the floor of Congress — and state legislatures as well — Keefe and Ogul have written a most interesting chapter on the characteristics of legislators themselves. The very nature and output of the legislative process depend on the kind of men our political system elevates into the legislature. The fact that not everyone can be a legislator is brought home dramatically by the data which is presented. *Who* gets elected to legislative office often depends on the nature of political recruitment patterns in a given locale, the character of the electoral machinery, the degree of party competition within an electoral district, and upon the social and occupational background of the candidate. The fact that the legislature is not a microcosm of the entire population is no mean consideration in evaluating the legislative process.

Because of and partly in spite of these factors the modern legislature is presented as an embattled institution. Part of the problem lies in its unrepresentative character. In a recent book Senator Joseph S. Clark of Pennsylvania complained that "The trouble with Congress today is that it exercises negative and unjust power to which the governed, the people of the United States, have never con-

1 Bertram Gross conceives of the legislative process exclusively in terms of group conflict and warring factions. Congress is viewed as a battlefield upon which constant combat is being waged. The metaphor is maintained throughout most of the book. See GROSS, *THE LEGISLATIVE STRUGGLE: A STUDY IN SOCIAL COMBAT* (New York: McGraw-Hill Book Company, Inc., 1963).

2 Text at 59.

sented."<sup>3</sup> Though the authors would not consent to so harsh a judgment, they do suggest that majority rule in Congress, as in several state legislatures, is frequently thwarted by malapportionment, thus compounding an already existing problem deriving from obsolescent rules of procedure and the nature of legislative organization. The implications and effects of malapportionment upon legislative behavior are discussed in an excellent chapter devoted to that subject. Second, the wide dispersion of power found in the modern legislature, particularly in Congress, has impeded the development of party responsibility. Third, the sheer welter of detail which inundates legislators leaves them little room for creative or imaginative thought. Given the complexity of our society the modern legislature is institutionally ill-equipped to do much except define public policy in the very broadest of terms. Finally, the legislature seems no longer an equal partner in the interplay among itself, the executive, and the bureaucracy. Its function is primarily one of *response* to the policy initiatives of the executive. Yet executive influence over Congress is not a simple matter, as the authors emphasize. They do not suggest that Congress is a totally devitalized institution, even though its role in the law-making process has undergone considerable change. Congress' power of resistance, for example, is still awesome, and executive influence over Congress is a most subtle and complicated art which defies accurate measurement. The description of the interplay between legislature and executive is one of the most instructive parts of the book.

The concluding chapter, which is a general discussion of the problems and future of the American legislative process, is a sober and realistic exercise in evaluation. While the authors are inclined to agree with the indictment lodged against Congress by its critics, they are skeptical of the reformers' solutions for achieving a greater measure of party unity, cohesion, and responsibility as well as majority rule in that body. For one thing, they do not feel that the situation is as bad as it may seem. For another, Congress and state legislatures are making some, albeit slow and grudging, progress along the lines of streamlining their organization and work habits. An inarticulate assumption of this book is that the legislature will improve in organization, party discipline, and responsibility in relative proportion to the improvement of these factors outside the legislature. It is suggested, for example, that party responsibility in the legislature will probably grow with the increasing nationalization of our politics and with the more equitable drawing of legislative district lines. For the legislature is really a reflection of our pluralistic and decentralized political system; it is a cacophony of discordant voices and conflicting interests, an unavoidable and perhaps necessary condition of any democracy. But such a democracy also implies the ability of a majority to act with reasonable dispatch. The challenge we face, therefore, is to find some way of adjusting the particularist tendencies of our political system to the general needs of the larger polity. This is the problem, presented by Keefe and Ogul in all its relevant and complex dimensions. I regard this book as necessary reading for all who wish to refine their understanding of the American legislative process.

*Donald P. Kommers\**

<sup>3</sup> CLARK, CONGRESS: THE SAPLESS BRANCH 17 (New York: Harper & Row, Publishers, 1964).

\* *Department of Government and International Studies, University of Notre Dame.*

## BOOKS RECEIVED

### ADMINISTRATIVE AGENCIES

THE COMMISSION AND THE COMMON LAW. By H. Arnold Bennett.  
New York: Exposition Press, 1964. Pp. 127. \$4.00.

THE ROBINSON-PATMAN ACT: Summary and Content. By Daniel J. Baum.  
Syracuse, New York: Syracuse University Press, 1964. Pp. 167. \$5.75.

### AGENCY

AGENCY. By Joseph L. Frasca.  
Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1964. Pp. 115.  
(Paper).

### BIOGRAPHY

JOHN MARSHALL AND ALEXANDER HAMILTON: Architects of the American  
Constitution. By Samuel J. Konefsky.  
New York: The Macmillan Company, 1964. Pp. 274. \$5.95.

THE WARREN COURT. By John P. Frank and Yousuf Karsh.  
New York: The Macmillan Company, 1964. Pp. 200. \$10.00.

### CRIMINAL LAW

THE RATIONING OF JUSTICE: Constitutional Rights and the Criminal Process.  
By Arnold S. Trebach.  
New Brunswick, New Jersey: Rutgers University Press, 1964. Pp. 350.  
\$10.00.

### LEGISLATURES

LAWYERS IN POLITICS. By Heina Eulau and John D. Sprague.  
Indianapolis, Indiana: The Bobbs-Merrill Company, Inc., 1964. Pp.  
164. \$5.00.

THE AMERICAN LEGISLATIVE PROCESS: Congress and the States. By William  
J. Keefe and Morris S. Ogul.  
Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1964. Pp. 498.  
\$7.95.

### NATURAL LAW

THE "ETIAMSI DAREMUS" OF HUGO GROTIUS. By James St. Leger, M.M.  
Rome: Typis Pontificiae Universitatis Gregorianae, 1961. Pp. 160.

### RELIGION AND LAW

RELIGION AND THE PUBLIC ORDER. Edited by Donald A. Giannella.  
Chicago: University of Chicago Press, 1964. Pp. 338. \$6.00.

THE SUPREME COURT AND PUBLIC PRAYER: The Need for Restraint. By Charles E. Rice.  
New York: Fordham University Press, 1964. Pp. 202. \$5.00.

#### MISCELLANEOUS

YOUR MARRIAGE AND THE LAW. By Harriet F. Pilpel and Theodora Zavin.  
New York: Collier Books Division, The Crowell-Collier Publishing Company, 1964. Pp. 352. \$0.95 (Paper).

WHEN YOU NEED A LAWYER. By Kenneth and Irene Donelson.  
New York: Doubleday & Company, Inc., 1964. Pp. 287. \$4.95.