

The Public and Its Government (Book Review)

James F. Kelly

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Kelly, James F. (1931) "The Public and Its Government (Book Review)," *St. John's Law Review*: Vol. 5 : No. 2 , Article 46.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol5/iss2/46>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

solidated. This is a courageous innovation in treatment since the student is given the opportunity to view related subjects broadly and to get a perspective upon legal development which should lend zest to the tedious study of rules and principles.

The book includes, beside 329 cases and about 25 extracts from opinions, comments on recent cases made either by the author or by leading law reviews along the quotations from such standard treatises as Brannon's Negotiable Instruments Law; Williston on Contracts and Jones on Chattel Mortgages. The cases are well chosen and from many jurisdictions. It is interesting to note that there are about three times as many New York cases as from any other state.

The idea of merging allied courses appears feasible and if this book is adopted as the basis for a similar course in other law schools it should demonstrate whether further expansion of this plan would be beneficial.

FREDERICK A. WHITNEY.

St. John's College School of Law.

THE PUBLIC AND ITS GOVERNMENT. By Felix Frankfurter. New Haven: Yale University Press, 1930, pp. 170.

Delayed though it was, the acknowledgment on the part of our nation's leaders that all is not just as it might be amongst us seems to have given the official impetus to widespread speculation on what is going to happen and what should be done to put our house in order. And thus the thinkers have been at work overtime. Panaceas for curing our national ills are plentiful. Their effectiveness is yet to be proved. Perhaps a few days hence the troubled waters will be a bit more placid, for a newspaper advertisement lying near us discloses that in one of the morrow's papers the good Dr. Fess will tell us whether our nation is bankrupt and about to crumble. Without awaiting his written word, I am content to believe that his answer will be "no."

How much this all reminds us of that troubled period not so many years back when the air was filled with war-time sensationalism and some of us were busy dismissing certain instructors in foreign language from our schools, lest contact with them might adulterate the Americanism of the younger folks. From the sputtering lips and the hasty pens of men who should have been rational came suggestions for action—and some of them were put into effect—which, when considered a decade later, seem quite incomprehensible. Expression of opinion on government and politics that may be termed the products of sane reason are so few in these times that it is impossible to exaggerate the pleasure which is ours when we do locate them. To him who seeks such expression Mr. Frankfurter's most recent book is recommended. Reading it will be an invigorating experience.

The Public and Its Government reports four excellent lectures delivered at New Haven last year by this eminent constitutional lawyer as part of the series of lectures which are an annual feature at Yale University through the munificence of the William E. Dodge Foundation. One is reminded by the writer's treatment of the subjects of government which he has considered, of the faith of the nation's founders, so warm is his confidence in our constitutional government. Of course it is not the pleading of a professional patriot, but rather the exposition of the belief of one of the country's saner minds, who feels, we think, that the constitution is "equal to the needs of a great nation at war, and adequate to the desires of a generous and daring people at peace," if its interpretation is in the hands of judges who have "imagination for statesmanship" and the ability and the willingness to take advantage of the "ample resources for imaginative statesmanship" which that document contains.

"The Demand of Modern Society upon Government," the first of the lectures, is a most interesting review and partial summary of the changes in the nation, occurring since its inception, which have made the functions of government so different from what they were and what they were thought to be in the time of the founders. It reminds us, however, that in spite of these startling changes, the basic plan which the makers of the government adopted has withstood the test of necessity in a manner which reflects much to their credit. And the fourth lecture, "Administration and Democracy" seems to be a fitting compliment to the first. The author is quite intolerant of those who would criticise the *form* of government for its failings, without first focusing attention on the *quality of men* who make up the government, and the methods employed for their selection. His call for trained men for public service may be read with interest and considerable profit by those with whom rests the responsibility for choosing the individuals who must perform these varied and complex duties of statecraft. How well he has expressed the conclusion that "The difficulties of our social economic problems will not abate with time. One may be confident that they will become more complicated. They will make increasing demands upon trained intelligence. If government is to be equal to its responsibilities, it must draw more and more on men of skill and wisdom for public administration."

Consideration of the second and third lectures, "Does Law Obstruct Government" and "Public Services and the Public" receives our final comment. To us they were the most enjoyable pages of the book; and this, perhaps because reading them produced that most delightful feeling which comes from finding in the well-turned phrases of a master the refined expression of ideas, a few of which at some time before had occurred to us as being sound theories. If one is interested in his government, he is sure to find a great deal of pleasure in these chapters—and perhaps even more in reflecting upon the points which they suggest. The treatment of the decisions of the Supreme Court which have arisen from interpretation of the Fourteenth Amendment, and the author's comments on the consequences thereof, are splendid. Upon reading the third lecture we are bound to wonder for a bit how severe the detriment to the country may be if some day the Court invalidates a legislative enactment of the greatest moment merely because five of those on the bench are not competent to recognize the duty for *broad vision* in their

decision, or even so prejudiced through personal view as to allow such bias to influence the result. Naturally we may dismiss this possibility by reassuring ourselves that the bench will be made up of men of quality—especially may those of us do so who keep faith in the watchfulness of the Senate. Yet distinguished courts have in recent years interposed their veto “against state action in matters confessedly of local concern, dealing solely with local situations, and expressing remedies derived from local experience.” The author points out that since 1920 the Supreme Court has invalidated more such legislation than in the fifty years preceding, adding however that it has always been “by a divided Court, always over the protest of its most distinguished minds.” Professor Frankfurter urges as the way out that the judges be men of *broad vision*. Certainly it is not a complex formula. Let us hope that it will become more noticeable soon in the decision of these problems which ask something more of our judges than the mere determination of the legal effect of legislative phraseology.

“Public Services and the Public” contains a very enlightening consideration of public utility regulation in its present state, a frank recognition of the exceedingly intricate problem which it involves, and some suggestions for possible improvement. In a very few words this discussion describes more effectively than anything else which has come to our attention the ever-increasing complications in which public utility regulation is necessarily involved. Far greater, however, are the ones brought about through decisions of our courts, which have gone a long way to place the subject of utility regulation in such a condition as to instil in the mind of the casual observer very serious doubts as to the possibility of ever untangling the *web that has been woven*. A detailed review of the various steps in the well-known New York Telephone case to be found in this lecture is quite apt to suggest to the reader that the job which has been given our regulatory bodies may in some instances prove too stupendous for satisfactory adjustment. We are told that the heart of the present difficulty is in the “current judicial doctrines of valuation.” Mr. Frankfurter is a violent critic of the Supreme Court in this regard. He says: “The determination of utility rates and the ascertainment of the rate base are essentially economic problems. But no judicial pronouncements upon matters fundamentally economic run so counter to the view of economists as do the recent utterances of the Supreme Court upon present value. They are based on unrealities, are financially unsound, and lead to uncertainty and speculation.” It is not claimed that the adoption of a sounder rule by the Court for the guidance of the various regulatory bodies will end forthwith and for all time the difficulty which this problem of regulation presents, but he blames the present uncertainty which has been created, “*the maze of cobwebbery*” on their failure to do so. The author has very fairly called attention to the fact that the men who do the work on the commissions, have been with very few exceptions individuals of limited ability. On the other hand, the utilities which it is their delegated task to regulate are represented by lawyers and other experts chosen from the best in the field. It is natural that men of experience and a high degree of competence are not attracted in great numbers by the moderate salaries which are paid to those who take positions on the regulatory bodies as commis-

sioners or as employees under the supervision of these commissions. Improvement of these conditions is suggested as a step in the right direction.

These lectures are recommended highly to everyone who feels the problems of government as cares that are personal. There are still many who do so. To students of constitutional law, especially those who are actively engaged in the study of that subject in law school, the book is suggested as a most helpful and interesting companion.

JAMES F. KELLY.

Mount Vernon, N. Y.