

counters with some of the leading scholars of the day, such as Frederick Jackson Turner, John Franklin Jameson, Herbert Baxter Adams, Albert B. Hart, and Richard Ely.

Method aside, Osborn has produced an important work which will doubtless stand as the classic reference on Wilson's early life for many years to come.

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Constitutional Politics in the Progressive Era: Child Labor and the Law.

By Stephen B. Wood. (Chicago: The University of Chicago Press, 1968. Pp. xiv, 320. Notes, bibliographic notes, index. \$10.00.)

Wood bills this work, focusing upon the campaign for a federal child labor law, as a case study of "the deeply political processes by which constitutional law is formed." He further writes, "an understanding of constitutional development involves more than insight . . . into the operation of federal judicial power. It necessitates exploration of every phase of democratic policy formation—from the coalescence of politically relevant opinion and the enactment of public policies by the popular branches of government through judicial construction of the limits of the powers and the legitimacy of the purposes embodied in legislation . . ." (pp. ix-x).

Unfortunately, his study fails to fulfill this promise. He does not adequately explore the forces making for congressional passage first of the Keating-Owen bill and then of the Pomerene amendment. His explanation boils down to little more than an appeal to the spirit of the times. He does not, for example, discuss the role of the nation's women's clubs in agitating the question; he does not explain the shift by the AFL from opposition to support of federal legislation; he does not show in sufficient detail the activities of the National Child Labor Committee in promoting favorable sentiment and lobbying in Washington. Moreover, the author stops in the middle of the story. He does not even try to explain the failure to ratify the child labor amendment. And the reversal of *Hammer v. Dagenhart* (1918) in the *Darby Lumber Company* case (1941) is summarily dealt with in two pages with the explanation that the depression brought about "a transformation of popular sentiment" (p. 300).

The heart of the book—and its chief contribution—is its summary of the constitutional arguments, pro and con, in the debate on child labor in Congress, its detailed account of the steps taken in the litigation testing the constitutionality of the Keating-Owen bill and the Pomerene amendment, and its analysis of the resulting Supreme Court decisions.

Yet even within these limits the work suffers from weaknesses. Although Wood's assessment of the motives impelling the justices is on the whole judicious, it could have been strengthened by more research into their private papers. Except for a few scattered references to the Taft Papers, he has not

done this. In addition, the author is highly partisan in favor of the supporters of federal child labor legislation. This is reflected in such invidious phraseology as the reference to the "textile oligarchy" (p. 65) and his complaint about the justices reading their "anachronistic" convictions into the Constitution (p. 156).

More importantly, Wood's partisanship leads him into substantive difficulties. Thus, for example, he exaggerates the inconsistency of the *Dagenhart* decision with existing precedents. The fact was that Supreme Court had developed two distinct lines of precedent—one upholding national power, the second hewing to the limiting doctrine of dual federalism—which gave the justices broad leeway in picking and choosing in any given case. Nor was the decision as irreconcilable with *Hoke v. United States* (1913) as Wood suggests. The Mann Act prohibited the transportation of women across state lines for immoral purposes; it did not deal with prostitution within the states.

Second, the argument of the defenders of the two measures that the Supreme Court should not look beyond the face of the law to the motives of Congress is—as has been indicated in subsequent constitutional history—a double-edged sword. And this preachment was not consistently followed even by those who urged it in this case. Was not the aim of the Brandeis brief in the *Muller* case (1908) to educate the justices to the purposes of the legislation?

Third, the fears of conservatives about the consequences of upholding the measures were not as "entirely visionary" as Wood assumes. Admittedly, Congress "has yet to outlaw red-headed passengers from interstate transit" (p. 302). But the *Darby* decision did symbolize and confirm a fundamental change, for good or ill depending upon one's point of view, in the previously existing federal equilibrium. It is noteworthy that many sincere proponents of curbing child labor did find merit in the *Drexel* decision (1922) and that its limitations upon the federal taxing power remain accepted law to this day.

There are a number of minor typographical errors—Lippett for Lippitt (pp. 76-77)—and factual errors—Atlee Pomerene was hardly a protégé of Tom Johnson (p. 193).

Notwithstanding these demurrers, Wood's study is a significant contribution to the understanding of twentieth century American constitutional development—especially the shortcomings of a system that relies upon private litigation to test great public policies.

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From Sacred to Profane America: The Role of Religion in American History.

By William A. Clebsch. (New York: Harper & Row, Publishers, 1968. Pp. xi, 242. Notes, index. \$5.95.)

Professor William Clebsch even in the title of his volume makes quite clear the premises under which he writes. If he does not explicitly belong to