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Government Corporations and State Law

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BOOK REVIEW

GOVERNMENT CORPORATIONS AND STATE LAW. By Ruth G. Weintraub. New York, N. Y. Columbia University Press. 1939. Pp. 200.

If the amount of literature on a subject is a measure of its importance, surely the sudden burst of books, monographs and articles appearing on the subject of government corporations would relegate it to a position of prominence. Indeed, the tremendous expansion of the corporate form in governmental activities since the World War has led some to speculate as to whether it constitutes a challenge to our traditional form of government.¹ That there is nothing in the use of the corporate form which would disturb the federal structure is one of the contributions of Dr. Weintraub's monograph. To use the words of Mr. Justice Holmes, the incorporation of a government owned corporation is simply "for the convenience of the United States to carry out its ends".² Thus the corporate device is related to the means and has no necessary bearing on the legitimacy of the ends. Nor does it create any peculiar problems related to it as a means, for the author has demonstrated that the identical problems could arise if the governmental agency designated to execute the legislative will is not cast in corporate form.

In the chapter on "The State Seeks to Tax", the author is perturbed, and rightly so, by the hide-and-seek policy of the Supreme Court on the subject of state taxation of federally owned or controlled corporations. The suggestion that the elaborate confusion may be overcome by providing Congressional payments in lieu of such taxation is sensible. At least it is a recognition that an immunity based upon shallow constitutional dogma should be discarded for a realistic apportionment of tax sources. As to state taxation of the income of employees of government corporations, the recent about-face of the Supreme Court³ would seem to mark the beginning of a dismantling of a crude structure, in favor of intergovernmental realism.

It is not only the subject of taxation of government corporations which has brought into relief the zig-zag pattern of federal-

¹ See, for example Freedman, *Intergovernmental Tax Immunity* (1938) 24 WASH. U. L. Q. 50.

² *Clallam County v. United States*, 263 U. S. 341, 345, 44 S. Ct. 121, 68 L. Ed. 328 (1923).

³ *Graves v. O'Keefe*, 59 S. Ct. 595, 83 L. Ed. 574 (1939).

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state relationship. The clash is repeated in the consideration of the effect of state police regulations upon national government corporations. Here too, as the author points out, the judiciary has painted a confusing picture. One exception, however, may be noted in the consistent deference the Court shows towards Congressional consent to state regulation. The solution in this field, too, seems to be by "thought out Congressional legislation."

The two chapters titled "The State Legislates" and "The State Cooperates", add comparatively little to what is already common knowledge, *i.e.*, the devices by which states make themselves receptive to the benefits of the activities of government corporations and cooperate administratively with federal officials.

Throughout this interesting monograph appear three definite conclusions: (1) there is no "special magic" in the corporate form which will help the national government in its operation with the states; (2) the corporative device can only be useful in such operations if based upon an intelligent system of legislative planning; and (3) the judiciary has served to obfuscate rather than to clarify the problem.

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