

---

---

## BOOK REVIEW

---

---

THE GENESIS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA. By Breckinridge Long, A. B., M. A., LL. M. New York: The MacMillan Company. 1926.

Mr. Long, who was formerly a student at the Washington University School of Law, has written "The Genesis of the Constitution of the United States of America" for the purpose of proving the derivative nature of our Federal Constitution and also for the purpose of showing in detail from what particular source each one of the more important provisions of the Federal Constitution is derived. Everybody knows that the sole executive power of the Federal Government is lodged in the President. From Mr. Long's book we learn that the title of President was borrowed from the New Hampshire Constitution of 1784, and that the principle of centralized executive power in one man was borrowed from the Massachusetts Constitution of 1780. The famous "advice and consent" clause, of which the Senate is so proud, was borrowed from the Pennsylvania Constitution of 1776. The section of the Federal Constitution relating to the federal courts is a synthesis of provisions from the constitutions of four states, Georgia of 1777, Massachusetts of 1780, Virginia of 1776 and Pennsylvania of 1776.

On page 190 of his book Mr. Long clearly and fairly indicates the scope of his effort in the following language: "This synopsis of the Constitution of the thirteen original states shows that there existed, years before the drafting of the Federal Constitution in 1787, a generally accepted form of government in America; that this form was composed of three separate and distinct branches, executive, legislative and judicial; that each of these three divisions was charged with functions and circumscribed with limitations so similar to those specified in the Federal Constitution as to deny the suggestion of divine inspiration as applied to the convention which framed that instrument."

The main portion of Mr. Long's book is an analytical commentary, written from the viewpoint of a modern American lawyer, on the various constitutions, articles, charters, plans, resolutions, covenants and orders which were promulgated on the American continent from Maine to Georgia during our country's history from 1607 to 1789. There is also a valuable appendix giving the text of the Federal

Constitution with 174 references to the documentary sources from which, in Mr. Long's opinion, 174 separate provisions of the Federal Constitution were borrowed. In many instances a particular reference is to many different sources, each source indicated with its date. This unusual and scholarly appendix makes Mr. Long's volume one of true value as a book of reference. In his appendix and also in the main portion of his book Mr. Long very properly includes as sources of the Federal Constitution certain documents which were unofficial and nonlegal, but of profound importance in the development of American constitutionalism, especially on its federalistic side. Among these unofficial and nonlegal sources, adequately criticized by Mr. Long, may be mentioned the published proposals for a federal union, made by Penn (1696), Livingston (1701), Peters (1754), Franklin (1754), Coxe (1772) and Galloway (1774).

In marshaling the sources of the Federal Constitution Mr. Long preserves the important distinction between sources relating to the separate governments of the separate states, on the one hand, and sources relating to the federalistic ideal, on the other hand.

Undoubtedly there were many concrete efforts towards the federalistic ideal before 1789. Undoubtedly these efforts furnished valuable lessons for James Madison and the other dominating members of the constitutional convention. But it must be confessed that these lessons for the most part were disasters to be avoided rather than precedents to be followed. Mr. Long winsomely has proved that the Constitution is a derivative document so far as ordinary efficiency of government is concerned. But on the federalistic side, with its mystical atmosphere of "dual sovereignty," the Constitution of the United States is so radically different from, so eminently superior to, the Articles of Confederation and all the other plans for union that perhaps some of us are inclined to feel that Mr. Long has underestimated the originality of the most important feature of the Constitution, the feature expressed by the familiar motto "E Pluribus Unum."

Mr. Long's work is a noteworthy contribution to the literature of constitutional history. There is one regrettable omission. The book contains no reference to the Ordinance of 1787 for the government of the Northwest Territory. Undoubtedly this instrument was the source from which at least one important provision of the Federal Constitution was derived, namely, the clause against the impairment of contracts by state laws.

TYRRELL WILLIAMS.