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The Constitution of South Carolina, Volume I: The Relationship of the Legislative, Executive, and Judicial Branches, by James Lowell Underwood

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BOOK REVIEW

THE CONSTITUTION OF SOUTH CAROLINA, VOLUME I: THE RELATIONSHIP OF THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES. By James Lowell Underwood. Columbia, South Carolina: The University of South Carolina Press, 1986. Pp. 195.

Reviewed by John P. Linton and William L. Hirata*

Perhaps the most frustrating aspect of researching South Carolina constitutional issues is that the source text, the State Constitution, has periodically been completely amended. The task of urging the application of decisional authority to subsequent amended versions of our Constitution presents an awesome challenge. Lawyers, historians, and political commentators interested in researching the historical development of the balance of power between the executive, legislative, and judicial branches will be delighted to find that *The Constitution of South Carolina, Volume I: The Relationship of the Legislative, Executive, and Judicial Branches* provides a brief, yet rich, resource text for studying the evolution of the constitutional framework of the South Carolina Government.

This essential treatise could not have been written by a more qualified author. Professor James Lowell Underwood, a graduate of Emory University and its law school and Yale University Law School, is currently the Strom Thurmond Professor of Law at the University of South Carolina. He has taught at South Carolina since 1966. In recent years he has taught the first-year course in Constitutional Law and upper-level courses in Federal Practice and State Constitutional Law. Among his

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numerous publications are *A Guide to Federal Discovery Rules*¹ and *Civil Trial Manual*.²

The purpose of Professor Underwood's text is to provide a political history to expand the reader's understanding of the development of the present State Constitution. Former Dean of the University of South Carolina Law School, Harry M. Lightsey, Jr., encouraged Underwood to undertake this assignment. The project was sponsored by the Law School's South Carolina Legal History Collection as part of a study of the South Carolina Constitutions.

The book pursues the thesis that the preeminence of the legislature's dominance of state government has its roots in colonial times.³ Underwood reviews the Constitution of 1790, which established the main contours of government until the Constitution of 1861; the two Reconstruction Era Constitutions of 1865 and 1868; the populist Ben Tillman movement; and the reaction to the Reconstruction Period abuses that inspired the Constitution of 1895. He traces the growth in government during this century and the political and economic influences which produced wholesale revisions in the 1970s to our current Constitution of 1895.

The book is organized into eight chapters. The first subject covered is the historical basis for legislative dominance.⁴ Professor Underwood's numerous references made to letters written by colonial officers, and the extensive research done in newspapers and committee meeting minutes is most helpful. Underwood then discusses two of the causes for the waning of legislative dominance: Judicial review and the adoption of the unified judicial system in 1973, and the growing influence of the Governor.⁵ The book examines the constitutional provisions limiting the legislature's power to enact special and local laws, focusing, in particular, on article III, section 34.⁶ The book then analyzes two areas of cooperation between the branches: The Budget and

1. J. UNDERWOOD, *A GUIDE TO FEDERAL DISCOVERY RULES* (2d ed. 1985).

2. R. McCULLOUGH & J. UNDERWOOD, *CIVIL TRIAL MANUAL 2* (1980).

3. J. UNDERWOOD, *THE CONSTITUTION OF SOUTH CAROLINA, VOLUME I: THE RELATIONSHIP OF THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES 7-26* (1986) [hereinafter *VOLUME I*].

4. *See id.*

5. *See id.* at 27-107.

6. S.C. CONST. art. III, § 34.

Control Board, a “power fusion organization” of the General Assembly and the executive branch; and the fashioning of court rules, a compromise between the General Assembly and the judiciary.⁷

Of course, the book is not without limitations. In particular, the chapter on the constitutional provisions limiting interest group influence⁸ is not as complete as a practitioner in that area would desire. The enactment of article VIII, section 7, on March 7, 1973, which provides for Home Rule,⁹ has basically supplanted article III, section 34, as the primary constitutional basis for launching attacks on special legislation. It is understandable why Professor Underwood would have been reluctant to incorporate cases involving Home Rule in his text, because such a digression would have required discussing organizations such as county legislative delegations and special purpose districts. Apparently, Volume II will focus on these subjects.

Professor Underwood discusses the veto messages sent by the Governor to the General Assembly.¹⁰ Former Governor Richard Riley was sensitive to the constitutional prohibitions against special legislation and vetoed much of the legislation which he found violative, as Professor Underwood duly notes. The General Assembly, however, frequently overrode these vetoes, leading the undersigned to conclude that on occasions the General Assembly defers enforcement of constitutional provisions against special legislation to the judiciary, which, of course, can only act where it has jurisdiction.

The book has been thoroughly researched and makes for surprisingly easy reading. Although he is a well-regarded legal scholar, he is foremost a proficient teacher. This book demonstrates his concern for the reader’s understanding of the materials presented.

This book is the first volume of a contemplated study on the Constitutions of South Carolina. In the Epilogue Professor Underwood mentions that a discussion of the constitutional limitations on state and local financing authority¹¹ is beyond the

7. See VOLUME I, *supra* note 3, at 128-83.

8. *Id.* at 108-27.

9. S.C. CONST. art. VIII, § 7.

10. See VOLUME I, *supra* note 3, at 117.

11. *Id.* at 187-88.

scope of the text and requires discussion in a later volume. Certainly, there is a great need for such a volume, particularly considering the many constitutional issues raised by the current trend toward “privatizing” traditionally governmental services. In the hands of an author and teacher of Professor Underwood’s abilities, resources made available for such a study would be well spent.