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Gateway to Citizenship. By Carl B. Hyatt. Washington: United States Government Printing Office. 1943. Pp. vii, 153.

Mr. Justice Felix Frankfurter once said, " . . . they [immigrants] come not merely because persecution drives them; they come because the American tradition beckons them." Once we allow those persons of other lands to take up their residence within our shores and become American citizens, the question arises as to how we are going to impress upon them the meaning of the American way of life.

All immigrants desiring to become citizens must maintain their residence within the United States for a certain number of years. They must meet certain educational requirements, and comply with the various regulations as set up by the Immigration and Naturalization Service. Yet something is lacking in this whole process in that it tends to become too cut and dried a procedure, culminating in naturalization ceremonies which fail to dignify and emphasize the importance of citizenship. In aiding in the naturalization of some fifteen hundred soldiers the importance of these ceremonies has made a lasting impression upon the writer of this review. On days when we rushed a group of soldiers to the door of the courtroom, scurried in when the judge called a short recess in his regular business for the purpose, heard the names of each of the men read hurriedly from a long list, saw the judge sign the court order without so much as glancing up from his bench, and scurried out again so the usual "run of the mill" cases could go on, there seemed to be an empty feeling on the part of the naturalized persons. Many men have asked, "Is that all?" in tones which registered complete disappointment.

There has been a crying need for literature to aid those engaged in work pertaining to naturalization to make the induction ceremony one which will remain in the memories of naturalized citizens for the rest of their lives. That need has been fulfilled by the Department of Justice in its excellent book entitled *Gateway to Citizenship* by Carl B. Hyatt, Specialist in Education, Immigration and Naturalization Service, Department of Justice, in cooperation with the Committees on American Citizenship of the American Bar Association and the Federal Bar Association. It is a manual of principles and procedures for use by members of the bench and bar, the staff of the Immigration and Naturalization Service, civil and educational authorities, and patriotic organizations in their efforts to dignify and emphasize the significance of citizenship. Prepared by persons and organizations who

are experts in the field, it contains a wealth of information, suggestions, and ideas which can be used in making the induction ceremony a real medium for implanting and preserving the spirit of America in the minds and hearts of new Americans.

Beginning with a historical background, the manual sets forth the significance of the naturalization ceremony in interesting, clear, and concise language. No exact formula is laid down to be minutely followed; instead, suggestions are made which will fit any situation that may arise.

As the author states, the time and place of induction is not as important as the induction itself; but he gives many suggestions as to how the careful selection of a suitable background may enhance the ceremony. He is careful to state that every final hearing must, by law, be had "in open court."[1] As for the time, it is recommended that Saturday and evening sessions be held in order to bring some relief from the pressure on the court and to eliminate court work that has no bearing on naturalization proceedings. Too, such sessions offer a greater opportunity for friends, relatives, bar associates, civil and educational authorities and members of patriotic organizations to be present, either for personal reasons or for the purposes of cooperating with the judge in carrying out the spirit of the joint resolution.

All preliminary procedures and activities not absolutely essential to induction purposes should be completed beforehand so that nothing will interfere with the smooth functioning of the court at the time of induction. The need for solemnity and impressiveness in the opening of the court if handled well will influence, in a large measure, the solemnity of the courtroom audience and its attentiveness to the proceedings. The flag, appropriate music, and an invocation may be used in various ways to make the ceremony more impressive. At no stage in the induction ceremony are there more local variations than at the presentation, or examination, of candidates for the decree of naturalization. Yet deep emotional responses can be aroused at the conclusion by an oath clearly and judiciously given, and sincerely and thoughtfully repeated. Therefore the procedure of oath taking should be divorced from the routine and made more impressive by having it rendered by a person who can do it clearly and coherently so that it may be easily understood.

The subject of the address to new citizens is excellently handled. Details should be properly left to the judge of the court. Judges are reminded that the address centers around the theme of the implications of citizenship, emphasizing alike the duties and privileges, the

[1] Sec. 334(a) Nationality Act of 1940; 8 U. S. C. A. §734(a) (1942). 54 Stat. 1156 (1940).

obligations and rights of our American democracy. It should be short, inspirational, and expressed in simple English to be effective. As subject material the author advocates the pointing out of contributions to the American way of life by famous foreign-born Americans so as to give the newly naturalized citizens a feeling of belonging to America and to instill in them a willingness to do their part for their adopted country.

The awarding of the Certificate of Citizenship by the judge at the time of the regular ceremony carries greater significance than the presentation of them by the clerk at a later date. In addition to the certificate, some little memento, or souvenir of the occasion, might become a concrete symbol of the emotions of the new citizen experienced at the time of the assumption of citizenship.[2]

The pledge of allegiance will have the greatest effect if it comes immediately after the oath and if both the old and the new citizens participate. The entire group then experiences a common feeling in the pledge of allegiance to democratic ideals.

Courts should not close in the usual manner but should use a procedure which produces an inspirational and appropriate atmosphere which will not be easily forgotten. The climax should be solemn in order to enhance the atmosphere of the program.

In an effort to further community participation in the naturalization process, Congress passed a joint resolution in 1940 which reads in part as follows:

"Either at the time of the rendition of the decree of naturalization, or at such other time as the judge may fix, the judge or someone designated by him shall address the newly naturalized citizens upon the form and genius of our government and the privileges and responsibilities of citizenship; it being the intent and purpose of this section to enlist the aid of the judiciary, in cooperation with civil and education authorities, and patriotic organizations in a continuous effort to dignify and emphasize the significance of citizenship."[3]

Many courts construe the resolution to include any, or all, organizations which have an interest, directly or indirectly, in the naturalization of non-citizens, as possible participants in the "effort to dignify and emphasize the significance of citizenship."

Well-planned citizenship programs, in which there is an active participation by representatives of the community, not only during the court ceremony but also before and after, can go far toward blending

[2] This writer's experience has been that such a memento is treasured as much, or more, than the certificate itself. Practically all soldiers whom I have seen naturalized cherished the newspaper account and pictures of their naturalization more than anything else.

[3] 54 Stat. 178 (1940), 8 U. S. C. A. §727a (1942).

the new citizen into the community and making him a part of America. The designation by the President of "I am An American Day" has afforded opportunity for the staging of such programs. This idea had its inception shortly after the passage by Congress of the joint resolution, when the President of the United States issued a proclamation putting the resolution into effect.

In addition to the splendid handling of the subject of the naturalization ceremony the manual contains a valuable section devoted to source material which may be used to advantage in the naturalization process. This section includes statements by Presidents and Chief Justices of the United States, statements by foreign-born Americans, suggestions for addresses to new citizens, prayers, pledges, and oaths of allegiance. The index, compiled by Arthur Robb, Legal Research Attorney, United States Department of Justice, is commendable for its completeness.

The manual should be included on the bookshelves of every office which comes into contact, even remotely, with the subject of naturalization. *The Gateway to Citizenship* admirably fulfills its purpose: to assist members of the Bench and Bar, the staff of the Immigration and Naturalization Service, and other interested workers to dignify and emphasize the importance of citizenship. From this series of suggestions, ideas, and materials gathered from a survey of practices everywhere, there should result an increase in emphasis on the importance of becoming a citizen and the dignification of the process so important to our country in war and peace.

JAMES V. MORGAN.

High Point, North Carolina.
Member of the North Carolina Bar.
Now on duty with the Army Air
Forces in North Africa.

Handbook of the Law of Bills and Notes. By William Everett Britton. St. Paul: The West Publishing Company. 1943. Pp. xx, 1245. $5.00.

Professor Britton has added an excellent treatise on Bills and Notes to the Hornbook Series which now includes thirty-seven volumes. The book gives ample evidence of the author's thorough knowledge of the statutory and case law on the subject. A criticism may be made of many other books on Negotiable Instruments that their authors have not fully grasped the importance of the universal adoption in the United States of the Uniform Negotiable Instruments Law. It has been approximately twenty years since the last state adopted it and it has been in effect in some states for nearly half a century. The previous Horn-

book on the subject (Norton, 4th Ed.), was especially vulnerable to the criticism that it attached so little importance to the statute.

The present Hornbook is unequivocal in its recognition of the fact that the statute has superseded the case law as to those questions which are covered by statute. This is illustrated by the quotation from an opinion by the Kansas Supreme Court. "The only reason which need be given for the conclusion reached is that the statute so provides. It is sufficient that the law is so written. 'Ita lex scripta est.' "[1]

From this it should not be concluded that the book is a mere recital of the provisions of the Negotiable Instruments Law with accompanying interpretations. It does not follow the outline of the statute and is far more useful than it would be as an annotated edition of the statute. The introduction contains an interesting discussion of the function and early history of negotiable instruments, codification of the law, the types of instruments and leading principles of the law. In the introduction[2] it is pointed out that the courts have been guilty of the same sin of omission in overlooking the statute as has been charged against the text writers above.

The black-letter headings which distinguish a Hornbook have been prepared with the greatest of care. They frequently use language which differs from the exact wording of the statutory provisions but always represents an improvement. A state legislature which desires to give its negotiable instruments law a thorough overhauling would be well advised to select its sections from the black-letter headings of this book.

There is a commendable frankness in stating in connection with many problems that there is an irreconcilable split of authorities. In most cases the author states the two views and allows the reader to take his choice. Occasionally he shows a definite preference for one position, for example, as that a payee may be a holder in due course, and refutes the arguments made for the negative position.

Moreover the book is forthright in its criticism of the holdings in some cases which have been based upon a misconception of the statute. Werner Piano Co. v. Henderson and Reese, 121 Ark. 165, 180 S. W. 495 (1915), and Gulbranson-Dickinson Co. v. Hopkins, 170 Wis. 326, 175 N. W. 93 (1920), are described as cases in which the decisions were unwise and unnecessary.

As a general proposition, the author makes it quite clear when he is reporting the law as expounded in the cases and when he is giving expression to his own views which may not have judicial support. One exception which happened to catch the attention of the reviewer is found on page 390. The statement is made that "a claimant of the

[1] P. 41. [2] P. 20.

holder in due course position must himself satisfy all of the requisites of due course holding." This is followed by a statement that a good faith holder who gave no value himself could not rely on a previous holder's giving of value to qualify him as a holder in due course. The only authority cited is a law review article in which, however, the position was taken that the language of Section 26 of the Negotiable Instruments Law clearly makes it possible to do just that. The problem is far more important than its treatment in the Hornbook and other texts would indicate. The question as to whether a bank becomes a holder for value when it credits its depositor's account with the amount of certain instrument is discussed at length. If the court should have its attention called to the fact that the depositor himself gave value (if such was the fact) even though he was not a holder in due course, it might well find under Section 26 that the bank having the other qualifications of a holder in due course is deemed a holder for value even before it has permitted withdrawals from the account.

The discussion of bank credit as value should have a reference to the note in (1924) 33 YALE L. J. 628 which makes a definite contribution to the understanding of the problem. It is a questionable criticism of a book which probably contains more law review citations than any text in its field, that it does not contain more. The absence of a table of law review citations is one of the noticeable defects of the book. It is probable that the failure to include this and other useful features such as the Bills of Exchange Act and related American statutes is attributable to the desire to conserve pages.

One other criticism concerns the failure to give credit in at least two instances to the excellent text of the late Professor Lile, BIGELOW ON BILLS, NOTES AND CHECKS (3rd ed. 1912). The latter book, at least until the appearance of this Hornbook, was the most scholarly text in this field. The Hornbook in discussing the right of a drawer to recover money paid out on a materially altered instrument,[3] and also the right of an obliger to set up the *jus tertii*,[4] fails to make any reference to the treatment of these subjects in long footnotes in Professor Lile's book. In the former instance credit is given to a law review article which itself recognized the valuable discussion by Professor Lile. In the latter instance, while his argument is used, he is not mentioned.

For fear that mentioning certain defects may give a wrong impression, it is repeated that in this reviewer's judgment, this Hornbook is the best text on Negotiable Instruments.

ROBERT M. HUNTER.

Professor of Law,
Ohio State University.

[3] P. 650 *et seq.*

[4] P. 751 *et seq.*

American Political Parties: Their Natural History. By Wilfred E. Binkley. New York: Alfred A. Knopf. 1943. Pp. xi, 407, xii. $3.75.

"Political parties are devices for doing indirectly in democratic societies what is done directly in non-democratic societies. That is to say, they control the approaches to public power and are the instrumentalities by which powerful groups . . . achieve control of government and maintain themselves in power."[1]

It is important, if this be their nature, to know something of the role played in the past by political parties; for their power continues at a never-diminishing rate. Since they are always with us, it aids in understanding their present—and potential—influence to look back and examine their origin and subsequent history. But it is only necessary to glance at history itself; for so entwined have parties been with our past that they not only are visible in its every aspect; they have frequently determined the course of this same history. One would have developed quite differently without the other to mould it, if indeed, either would have developed at all.

The account is not a simple, strictly chronological one. It is made more graphic by grouping developments and ideas into broad periods and showing the role that parties have played in terms of what has been accomplished by the people who supplied the leadership which enabled the group to make its influence felt. The author has absorbed his material and released it objectively; it has benefited as a result of his ability. The presentation remains throughout a natural history. He has written interestingly and with animation, and apparently his account is authoritative and his views are sound. He speaks assuredly, but not obnoxiously, and his approach and presentation should insure a large reading public. The analyses of personalities, as well as of events, are clearly, shrewdly, and deeply drawn. Detail, humor, critical evaluation, and historical background are well-proportioned. All who are interested in government, as all should be, will find value and interest in its pages.

This interpretation of the development of parties is told in terms of social and economic history, and aggregate opinion; a *vox populi* has furnished the impetus for beginning all major political struggles, and this has been based on changes and developments in the ways of American living. The voting public, since it was interested in its aims to the extent of doing battle to bring them about, has sought out its leaders, given them its confidence, and supported them in action. Of course the statesmen, the politicians, the leaders who directed these events are no less important than the very existence of the party itself,

[1] Odegard, *Political Parties and Group Pressures*, 179 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 68.

since they guided its growth, led the struggles, kneaded the constituents, and synthesized those ideas and purposes with the political group which was able to produce results. Without these specific personalities, it is safe to assume that events would have developed quite differently, even if it may be precarious to try to see if they would have been better or worse. But here, as is often the case, while the human element shaped the course of history, this self-same leadership was in turn affected and modeled by the events which it sought to control. There remains the old question: Do men shape events or events shape men?

Parties have behaved peculiarly during their history of the past one hundred and fifty years. They have experienced birth, illness, and death. There have been marriages, brief separations, and outright divorces. Scandals have not been absent. There have been children, both legitimate and questionable, as well as bastards, hybrids, and orphans, step-children and foster children. They have run the gamut of human emotion, from success, worship, and sacrifice to frustration, treachery, and failure. But since a political party is only the reflection of existing conditions, expressed in terms of human endeavor and frailty, this is really not surprising. It can only be the sum of its component parts.

Political parties, at least in the light of the definition given above, did not begin only with the formation of the government in 1789. There were no formal recognized organizations before then, or even immediately after the infant democratic experiment was set up; yet groups wielding influence were definitely in evidence as early as 1676, as witnessed in Bacon's rebellion. Social forces were in direct conflict here, but though the differences were sectional, they were localized. Not until British oppression forged a semblance of unity among the bickering colonies could there be any national alignment.

So it was mainly after 1787 that the divergent groups, brought together by common interests, and led by Washington and Hamilton, formed the first national party. In a sense, however, the Federalists were to commit suicide, because the members did not look on themselves as a political organization, not believing in such an institution. John Adams expressed his fear that the Republic would be divided into two great parties, declaring that it would be the greatest political evil possible under the Constitution. John Marshall avowed that nothing "pollutes the human mind more than a political party." Washington likewise condemned the idea in his "Farewell Address." With these views, they naturally never created any adequate machinery to perpetuate the party, so that it failed to become a powerful weapon for concerted action.

The Anti-Federalists had their colonial forbears in the backcountry regions from Maine to Georgia, the Scotch-Irish wherever they were, the small farmers, the hunters and trappers of the South, the Green Mountain Boys of Vermont, and the thrifty German farmers of Pennsylvania. Each opposed its individual counterpart, but all represented opposition to the autocratic, proprietary interests, whether it be church, planter aristocracy, or wealthy merchant. Thomas Paine unconsciously touched the spark, Patrick Henry kindled the flame, while Jefferson was to carry the torch. Though they struggled separately in the several states to prevent ratification of the Constitution, the Anti-Federalists were still not a national party because they had no nation-wide combination, in spite of the Jefferson-Hamilton controversies, and the agrarian-business differences. It remained for the genius of Jefferson to later create the first genuinely American party.

As the Jeffersonian Republicans' stock began to rise, the Federalist opposition gradually sank towards ruin; yet still the general opinion remained that political parties as such were evil. Following the War of 1812, there occurred a one-party government. Jackson rode this crest into office, pushed by parts of all sections of the country—Southern yeomen and farmers, Northwest pioneers, Northern immigrants, and Eastern country folk.

Jacksonian democracy reigned for almost two decades, when discontent appeared in transient organizations which carried little strength. The Workingmen's Party, the Equal Rights Party, the Locofocos, the Barnburners, the Hunkers, the Liberty Party, the Know-Nothings—all were relatively shortlived objections which actually accomplished little, though they served to express opposition to those in power.

It remained for the Whigs, with the traditions of Hamilton and the moneyed interests, to purge the government of Jackson's extreme practices and tyranny. Clay was their strong leader, and their avowed purpose became to preserve the Union; Harrison and Taylor personified it in office. In the Harrison campaign, the labor vote was captured with the slogan, "Harrison, two dollars a day, and roast beef," which smacks of the later-day "two cars in every garage and a chicken in every pot" idea. In the century and a half from one of the greatest presidents to one of the most greatly discussed, there has been surprisingly little basic difference in the political techniques and methods through which a party has transformed the aims of its members into action.

Even as late as this the nation insisted that there could be but one political party, and each considered itself a fraction of the Republican Party. The two-party system did not become recognized as such until the forties, and each "faction" then became proficiently organized so

that a powerful oppostion was able to really assume the power; however the issue of slavery proved strong enough to break up both the major parties. Lincoln and Douglas, the proponents of opposite extremes, appeared with a meteoric suddenness.

Once again occurred the formation of a new party. Out of the pangs of moral, economic, partisan, racial, industrial, and religious differences emerged the new Republican Party. What was even more amazing than the mixture of so many groups was its lack of an outstanding leader, a Washington, Jefferson, Jackson, or Clay. Lincoln became its first successful candidate.

The Democratic Party meanwhile suffered from the untimely death of Douglas, and the Civil War paralyzed it until the panic of 1873 changed the tide. The mere fact of its recovery at all after such an experience was considered remarkable. Cleveland was successful in 1884, and led the party until Bryan assumed command. He was an expert politician and watched the public pulse closely; but, as he lacked the ability to transliterate its meanings into appropriate action, he missed the presidency.

The Republicans, after their eventual rebirth, found winning candidates in Grant, Hayes, Garfield, Benjamin Harrison, McKinley, Taft, and Harding, and there followed the conservative regime. Theodore Roosevelt stood pre-eminent as the master of group diplomacy, but the ability of these other leaders was conspicuous by its absence of this art. In this connection, Franklin Roosevelt is considered to have more of his distant cousin in him than the mere fluid in his veins. Coolidge continued this era after the reactionary wave against Wilson swept the Republicans back into power; the Party held sway until the catastrophe of the Depression removed it again, and the practical politician, Roosevelt, assumed command. Its chances for returning seem to depend on its ability to adopt a new strategy of attracting voters, according to the author. He maintains that their only chance for revival—even survival—is to outbid the Democrats for the support of the middle and lower income groups. He exhorts the "once proud and positive party to cease being the child of fortuitous circumstance," to stop merely "playing the breaks in one of the major crises of human history," and to rally themselves to be ready to take control with more than "a programless plea for a return to normalcy," in view of the fact that "the party of Andrew Jackson has never drawn anything but grief at the polls following a war."

There are some lessons from this history—both direct and implied—which both parties might do well to consider. For example, though trite enough, there must be those at present who flinch under the "noble" phrase which proffers the idea that this is the "era of the common

man." It is not a new term, nor is the irritation new. People writhed under a similar conception when Van Buren attempted to don the Jacksonian mantle.

But the over-all teaching is that no organization can be secure. Changing conditions dictate new regimes. When parties fail to maneuver themselves, because they have past commitments to keep, a new combination takes over, because it can satisfy this kaleidoscopic tendency. Perhaps this factor is a fortunate one, nevertheless.

Then there is also the strikingly apparent fact that in a postwar period the economic trend has always been a boom, followed by a panic which lapsed into a depression. The regularity with which this cycle has recurred might at present seem discouraging. Both parties would do well, it seems, to concentrate on an adequately detailed system of planning, in order to cushion, if not entirely prevent, such a recurrence. However, equally encouraging is the consistency with which strong men and radical policies have resulted at such times to meet the challenge. So with the momentous times approaching, skeptics who despair of efficient government from those in power at present, or such as the opposition has so far offered, might find some comfort and solace in the knowledge of this heretofore persistent rise of men of sufficient caliber and ability to carry on the higher traditions of the parties' pasts.

LOUIS A. CHERRY.

Assistant Director, Institute of Government,
Chapel Hill, N. C.

Lawful Action of State Military Forces. By Edmund Ruffin Beckwith, James G. Holland, George W. Bacon, and Joseph W. McGovern. Foreword by General Hugh A. Drum. New York: Random House. 1944. Pp. xviii, 248. $3.00 (cloth edition), or $1.50 (paper edition without supplement).

Viewing current trends in our national existence, it seems to me the authors of *Lawful Action of State Military Forces* have compiled a book of rules of conduct which will become more and more an essential part of the equipment of state military services and of peace officers and municipal authorities generally throughout the nation. The use of state militias in preserving order and protecting property is not new to us. Since the outbreak of World War II, however, federal troops frequently have been called upon not only to preserve order and protect property, but also to enforce continuance of industrial operations when stoppages have occurred or become imminent by reason of labor unrest or employer dissatisfaction. With the end of present hostilities and the emergence of labor unionism from wartime conceptions of its pow-

ers and rights, not forgetting its progressively increasing importance prior to the war era, it appears almost inevitable that a protracted evolutionary period will usher in frequent essays of miltiary bodies, state and federal, to accomplish certain purposes or as preventative measures in ominous contingencies.

Furthermore, this little volume is bound to become of no slight importance to members of the United States forces after this war, if not before its close. Upon even the shallowest reflection who can avoid a little prophesying that with the precedents now being established almost daily, not only in the forcible composure of labor and management differences, but in other situations as well, conflicts between national and state military machinery are bound to arise? Indeed, mutterings, if not carefully veiled threats, have already emanated from more than one of our states in their objections to certain federal proposals. *Lawful Action of State Military Forces* consequently is bound to become a handy reference in such eventualities. While it treats primarily, and exhaustively, concerning the rights, duties, privileges and restraints of state military organizations, by this extraordinarily comprehensive detail it thereby indicates the lawful procedures and limitations of military action generally and must necessarily be helpful to federal officers in the exercise of their authority. Moreover, it does establish the definite confines of state militia activities and in that respect will be of aid in avoiding conflicts between state and federal operations and between the military generally and various local municipal authorities and civilian peace officers.

Of unquestionable value to military officials are its discussions relating to the individual rights of officers and men. After all, every person is accountable for his own acts, and a complete understanding of his official and individual responsibility is always of the utmost importance, especially when dealing with situations involving his own countrymen, not alien enemies.

One of the most conspicuous chapters of this work is that entitled "Military Justice." Here the authors have compacted within less than fifty pages a most succinct and interesting coverage of the fundamentals of the administration of miltary law. While their professed design is "to give only a general survey of its subjects because authoritative manuals are readily available to anyone who may participate in a court-martial or other phase of military justice," it would be difficult to find a more practical and comprehensive discussion of the subject in so few words. This chapter alone will prove most usable and valuable to any commander of state or federal troops as a pocket primer and guide in enforcing discipline, but avoiding the martinet's role, which is absolutely necessary in preserving the esprit de corps of any command.

This subject was ably discussed recently before the American Bar Association by the Judge Advocate General of the United States Army.

The chapters relating to "Restraint of Persons—Detentions, Searches, Crimes," "Protection and Control of Civilians," and "Protection, Control and Military Use of Property" will prove of utmost worth in many trying situations if quickly available to commanding officers of troops engaged in domestic disturbances.

And not least complimentary to the authors is the obviousness, even upon a cursory examination of this work, that it is extremely easy reading and is set up in such form that desired information may quickly be located within its 188 pages.

The authors and publisher are entitled to the highest commendation for this novel but much needed treatise. It has been presented to us as a public service, and it is distinctly that, based upon the ingrained and revered American doctrine that "the civil authority should always be supreme."

ROSCOE S. CONKLING,
Lt. Colonel, AUS.

Member of the New York Bar,
Presidential Board of Appeals,
Selective Service System.

Married Woman's Bill of Rights. By Nathaniel Fishman. New York: Liveright Publishing Company. 1943. Pp. 268.

When the law, following far behind most other human institutions, finally progressed far enough to recognize that a married woman is a person as distinguished from a chattel or mere non-entity, a great need for a certain kind of education arose. It became necessary, in order to achieve the purposes for which those reform laws were intended, to inform the married women of the country that their spouses were no longer legally their lords and masters. It is very likely that few married women were often chastised with a rod which could be passed through the wedding ring (a perfectly legal procedure at one time) prior to or during the period of reform. Consequently, there was probably no great necessity for informing them that when trouble arose at home they were legally free to defend themselves. Such defenses had in all likelihood been made long prior to the day when the magnanimous law-makers took away the right of a man to beat his wife. There is no doubt, however, that many women did not and still do not realize just how independent from their husbands they were —and are—in the eyes of the law.

This lack of knowledge springs perhaps from the fact that for a long time law has been primarily a man's field. As a usual rule the

married woman never came into active contact with the law, and in the rare occasions on which she did so she usually relied on her male relatives to handle the matter. Consequently, in a great majority of cases she has never been apprised of the laws which exist in her favor, nor has any effort been made to explain them to her. The net result of such a situation is that she is no longer in a position to blissfully disregard the law, but must reckon with it—in most cases at least—in the same state of ignorance as do most laymen and many lawyers.

The dissemination of information concerning the rights of a married woman is a matter of considerable social importance. Very probably many unpleasant situations within the home could be alleviated if the parties knew exactly what their legal rights and obligations were. There is a generally recognized ignorance concerning the ways and means and outcome of legal actions concerned with domestic disputes, which usually results in fear and misunderstanding concerning the legal remedies available in domestic matters. Thus, many persons embroiled in marital conflicts are afraid to avail themselves of the remedies which are at hand; whereas, if they understood the nature of those remedies more fully, their hesitation would quickly vanish. It has been argued that such an ignorance has its merit—that if people had more specific knowledge concerning the ways and means of ending a marriage, for instance, there would be an increased tendency toward divorce. Perhaps! But one can make just as logical an argument that medical knowledge should not be disseminated because people, knowing the remedies available, will become careless of their health. Just as in many cases some knowledge concerning medical remedies would result in a more intelligent effort to ease the suffering body, so would some knowledge of legal remedies serve to soothe troubled human relations. Thus, in disseminating such information one would be performing a public service.

In performing such a service, however, one would face an extremely difficult task. The law, in the field of domestic relations, is not without ambiguity and complexities. One cannot set forth a few maxims and content himself with the thought that the work is well done. Neither can he be content with an attempt to hide his head in the sands of a split of authority. In order to adequately perform he must set forth in a clear understanding manner the general principles governing each point of law covered, always carefully warning the reader that the law of each jurisdiction will present variances and that in all controversies which have become serious enough to require legal action, a lawyer should be consulted. The old adage that a little knowledge is a dangerous thing should be stressed.

Mr. Fishman, in his book, has striven to fill this need. He has at-

tempted to set out the whole technical field of domestic relations in simple story book form. There are chapters on marriage, divorce and alimony, on the adoption of children, and on the various phases of property disposition and control. The dangers of such sub-legal relations as the common law marriage are pointed out, and the aggrieved spouse is warned against attempts to solve his or her problems through the medium of a Mexican mail-order divorce. Mr. Fishman touches on the now famous case of *Williams* vs. *State of North Carolina;*[1] but, either because he was afraid he would confuse his readers or because he failed to grasp the full import of the court's decision, he does not clearly state the qualifications surrounding the rule in this case, with the result that the reader is left with a doubt as to just exactly what the full significance of the case really is.

It is doubtful whether Mr. Fishman has succeeded in his attempt to apprise married women of their legal rights. Indeed, it is doubtful whether anyone could do this in a simple generalized statement of the law. Due to the multitude of variations in the law occurring in the fifty-odd jurisdictions of this country, it is not very likely that anyone could adequately accomplish in one simple story book what the author purports to do in this book. One gets the impression on reading the *Married Woman's Bill of Rights* that the project was too ambitious. Accordingly, the book is disappointing.

There are two other principal objections that should be pointed out—objections which tend to make the work of mediocre quality. First, too much attention has been paid to readability and too little emphasis has been placed on the informative aspects of the book. For instance, it appears that the cases commented upon were chosen for their human interest rather than for their value as leading cases in their field. Perhaps this is excusable in view of the fact that the book was written primarily for laymen, but it adds nothing to its value as a source of information. Second, too much emphasis has been placed on the law of the State of New York. If this were a book written primarily for New Yorkers, such an emphasis, of course, would be desirable. However, the book purports to be of general interest. Therefore, the very heavy emphasis on the law of New York is, to say the least, unnecessary.

The author is to be commended in his attempt to disseminate information concerning domestic relations and the rights of a married woman. It is regrettable, however, that the book does not more adequately fill the need which exists for informing married women as to the legal rights which are available to them.

It would be difficult to recommend this book to either a lawyer or

[1] 317 U. S. 287, 63 Sup. Ct. 207, 87 L. ed. 279, 143 A. L. R. 1273 (1942).

a layman who was engaged in more than an idle attempt to satisfy his curiosity concerning the law in general.

FRED R. EDNEY.

Member of the North Carolina Bar
Associate Editor of the NORTH CAROLINA LAW REVIEW, 1942-43

Reply to Review by R. W. Winston of Walter Clark, Fighting Judge

In the February issue[1] of THE NORTH CAROLINA LAW REVIEW there appears a review by Judge Robert W. Winston of my biography of WALTER CLARK, FIGHTING JUDGE. It was well known among their intimates that Judge Winston and Judge Clark had a very poor opinion of each other. Now that Clark's lips have been sealed in death for more than twenty years, I, as his biographer, am interested in seeing that justice is done to his memory.

The reading public has a right to assume that anyone reviewing a book in a publication like yours is disinterested and certainly not unfriendly to the subject of the book. In this case the reverse is patently true. Aside from Winston's personal dislike of Clark, much of his previous writings show that he is an accomplished debunker of heroes. His present discussion is not a review of the book, but an attempt to answer it and to discredit Judge Clark. To serve his purpose he marshals a number of statements and insinuations reflecting upon his character.

Perhaps the most flagrant instance in this review is the statement: "Was it not unwise to declare that Clark never rode on a free pass, whereas until February 28, 1891 every judge rode on a pass.... Judge Clark who together with the other four judges of the Supreme Court and indeed all the judges had such passes." In the light of Clark's criticism of the use of free passes by public officials, as reflected in his biography, if this statement of Judge Winston's is true, then Clark was a hypocrite and a fraud. What is the truth of the matter? Judge David Schenck was Division Counsel for the old Richmond and Danville Railroad prior to its absorption into the present Southern Railway System. In a batch of Clark's letters marked "1885 to 1890" there is a copy in his own handwriting of the following letter:

"Hon. David Schenck

My dear Judge,

I appreciate your courtesy in sending me a pass over the R & D system. As I have refused all passes since occupying this position I take the privilege of returning this. I know you will not think me churlish or intending the slightest disrespect to one I esteem so highly as yourself. Nor do I mean to intimate that any judicial officer is

[1] Winston, Book Review (1944) 22 N. C. L. REV. 181.

guilty of impropriety in accepting these compliments which have the sanction of years and of many of the best and finest judges. But I simply defer to what in the greatest instrument of modern times is given as a motive for public conduct, 'a decent regard for the opinions of mankind' and to still higher authority which is equally familiar to you, I Corinthians, 8th Chapter, 13th verse.

With thanks for your kind remembrance and with highest regard always,

Sincerely yours,
Walter Clark."

A striking illustration of Winston's desire to belittle Clark is his assertion: "Adding to his hero's fame it is said that he was honored with an A.M. degree by our University in 1870. This is an error." According to the Alumni History of the University of North Carolina, Walter Clark received the following degrees from the University: A.B. in 1864, A.M. in 1867, LL.D. in 1890. *Res ipsa loquitur.*

Still pursuing his purpose, he insinuates that Clark did not give up a lucrative law practice in 1885 when he accepted the judgeship, but that the $2500 salary was a "windfall." At the time of his appointment to the bench, Clark was General Counsel for the Raleigh and Gaston, and the Raleigh and Augusta Railroads, and also of the W. Duke Sons & Company, perhaps the three richest corporations at that time in the state. He had compiled and edited CLARK'S CODE OF CIVIL PROCEDURE which at once became a standard work and enjoyed a wide sale. He had the best private library in Raleigh and owned a controlling interest in the *Raleigh News.* He appeared frequently before the Supreme Court of the state, arguing his own and other lawyers' cases. Among the latter were cases sent him by Honorable Pat Winston, the father of the reviewer. It is the irony of fate that Judge Winston should have disparagingly mentioned Clark's ownership of the *Raleigh News,* denominating it "a one-horse newspaper." Among Clark's papers are numerous letters from Pat Winston evincing friendship and admiration for the younger man, and in more than one he asked Clark to allow him to become a part owner in the paper. In one of these letters he offered as an inducement to the partnership the fact that his two sons Robert (our reviewer) and Frank were finishing school and they could be put to setting type. If Robert had got printer's ink on his fingers he might have been less severe in his criticisms of his father's friend.

A prime illustration offered by Winston in support of his criticisms relates to the "Kilgo-Gattis Travesty Trials." The biography shows that the trustees of Trinity College decided against Clark but that Kilgo at the hearing exonerated Clark and fixed the blame on Gattis, a superannuated Methodist preacher. Gattis brought suit in Granville County for damages against Kilgo and Ben Duke for libel. Two juries

found, under the direction of Judges Hoke and Shaw, that these defendants (Winston's clients) had maliciously libeled Gattis. One jury awarded Gattis $15,000 damages and the other jury $20,000. The presiding judges declined to set either verdict aside. Clark was not a party to this suit and did not sit on the case when it was three times appealed to the Supreme Court. The case finally went off on a legal technicality by an equally divided Supreme Court. Yet Winston, in his abandon, makes this astonishing statement: "The trustees of Trinity College decided against Clark; the Supreme Court of four Republican judges *did likewise* and *so did* Judge Fred Moore and *finally* Justices Connor and Brown."

The perfect key to Winston's antipathy to Clark is clearly revealed in his own statement that Clark was "a forerunner of a political revolution which has since well nigh destroyed constitutional government." This pregnant statement recognized that Clark *was a forerunner* and that the American people have followed him. Of course, it is possible that one hundred and thirty-three million free Americans may be wrong and Judge Winston right. It may be that the world revolution which is teed up on the teachings of Jefferson and Clark is all wrong and that Winston is right.

He concludes his review: "Undoubtedly Aubrey Brooks has won his case and made good his point." But he complains that Walter Clark was a "fighting judge" and that he thought of a judge as a "detached, impartial personage, learned, just and merciful." Winston's feigned resentment against Clark is not because he was a fighting judge but because he fought on the wrong side, according to Winston. Clark was fighting to destroy the American Tobacco trust, one of Winston's clients, which Winston himself asserts "had for about fifteen years crushed the life out of the tobacco farmers." Clark fought against railroad monopolies and free passes. Winston did not like that, because he admits having twenty-five such passes in his own pocket while holding court and trying a railroad case. Clark fought for a child labor law, to free women and children from the slavery of the common law, for an eight-hour-a-day law for laborers, to speed up the administration of justice and to stop needless delays and the use of worn-out technicalities in the administration of justice. Of course, he was a fighting judge who began a crusade, far ahead of his time and almost alone, to socialize democracy and protect human rights as against the glorification of property rights. Judges have always been fighters, but unfortunately too many of them have fought on the wrong side. It is an old story: Mr. Justice Miller, one of the ablest judges of the Supreme Court of the United States, in a personal letter to his brother-in-law which has recently come to light, speaking of his associates on

that bench, who were also fighters, said: "It is vain to contend with judges who have been at the bar the advocates for forty years of railroad companies, and all the forms of associated capital, when they are called upon to decide cases where such interests are in contest. All their training, all their feelings are from the start in favor of those who need no such influence."

Justice Frankfurter, in his lecture on the "Life of Justice Holmes and the Supreme Court" delivered a short while before he himself was appointed to the Supreme Court, said: "As late as 1905 the Supreme Court held it unconstitutional to limit the working hours of bakers to ten, and as recently as 1936 the Court adhered to this ruling that it was beyond the power of the state and of the nation to insure minimum wage rates for women workers obviously incapable of economic self-protection. Every variety of legislative manifestation to subject economic power to social responsibility encountered the judicial veto."

Robert H. Jackson, while Attorney General of the United States and shortly before his appointment to the Supreme Court, in his book THE STRUGGLE FOR JUDICIAL SUPREMACY, wrote: "By 1933 the Court was no longer regarded as one of the three equal departments among which the powers of government were distributed . . . it took over into its control the whole range of national economy. It tried to stem the increasing recession from *laissez-faire* and to make its teachings a part of our constitutional law. It conjured up such doctrines as 'freedom of contract' to defeat legislation, although the Court later found that the Constitution did not mention it—and it did not put a curb on trusts but on the people."

There is no such thing as a "detached" judge. The trouble in the past has been that too many of them were *"attached."*

Adding insult to injury, Winston asserts that the "story" is told that Murray Allen applied to Chief Justice White of the Supreme Court of the United States for writ of error to the Supreme Court of North Carolina in a damage suit against the railroad; that when the Chief Justice was told that Judge Clark had written the opinion for the Court he signed the writ and certified the error "without reading the record." This story is unbelievable on its face, but if it were true it constitutes a greater reflection upon the Chief Justice of the United States than it does upon the Chief Justice of North Carolina, and demonstrates that the great Chief Justice White was not "detached" and was not "impartial." This "story" Winston has oft repeated for the truth. I challenge him to produce a written statement from Murray Allen that Chief Justice White ever made such a statement to him.

Winston has told us what he thought of Clark. The situation recalls the remark of a distinguished minister who was invited to hear Ingersoll lecture on Moses. "No," he replied, "I would not give ten cents to hear what he thinks of Moses, but I would give fifty dollars to hear what Moses thinks of him."

AUBREY L. BROOKS.

Greensboro, North Carolina.