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BOOK REVIEWS

The Burlington Court Book: A Record of Quaker Jurisprudence in West New Jersey. Edited by H. Clay Reed and George J. Miller. The American Historical Association, Washington. 1944. Pp. iv, 372. \$7.50.

This is volume five of the American Legal Records series edited for The American Historical Association by the Committee on the Littleton-Griswold Fund.

The interesting story of the Quakers as a religious sect has been presented to the public many times by various writers. Now, for the first time, there appears in print through the medium of this book a record of Quaker jurisprudence in West Jersey, the first Quaker colony in America.¹ The book derives its title from the fact that it contains a translation into present-day type of the manuscripts of the Burlington Court Minutes of 1680 and the Burlington Court Book covering the period between 1681 and 1709. Burlington was the second and major focus of Quaker infiltration into New Jersey; Salem was the first.

The editors—Professor H. Clay Reed, historian of the University of Delaware; and George J. Miller, an attorney of Perth Amboy, New Jersey—have collaborated to produce from rough manuscript form a remarkably complete and readable text of the earliest court records of the Quakers in this country.

An historical introduction by Professor Reed places the Burlington Court Book in its proper historical setting. This introduction, written in an interesting and particularly lucid manner, serves to orient the reader and to whet his appetite for the somewhat drier and tougher going to be encountered in his perusal of the court records. The writer sketches, in turn, the following topics: The Quakers of West Jersey; Swedish, Dutch, and English Predecessors; Fenwick's Colony; The Burlington Settlement, 1677-1680; Government in West Jersey, 1680-1708; and The Courts and Their Work, 1680-1709. As the story unfolds, many interesting facts concerning the Quakers and their colonization in America appear. Only a few of the highlights may be mentioned here. The Friends are pictured as migrating to America not only for the purpose of founding "a colony where they could practice their religion and govern themselves in the way they deemed best," but also "to reap a profit from their investment in this enterprise."² Many of them, before sailing to America, bought lands in New Jersey

¹ It antedates its more famous neighbor, Pennsylvania, by six years.

² Page x.

from Major John Fenwick for what some historians have said to be purely speculative purposes. The story of the instability of Fenwick's title, which he had acquired from Sir George Carteret, and of the vicissitudes of the Quakers, who had bought from him, in their attempts not only to clarify the legal titles to their lands but also to acquire governmental rights over them—this story is a fascinating one.

The life of the Quakers of West Jersey was not overshadowed by religious preoccupations. As pointed out by Professor Reed, "the Quaker discipline recognized man as an economic as well as a religious being."³ His temporal activities are minutely recorded in the Burlington Court Minutes.

The Quaker discipline discouraged litigation among members of the faith. They threshed out their disputes in the meeting by arbitration—not in court. However, as the Burlington Court record discloses, there was plenty of litigation—both trivial and important—between Quakers and non-Quakers. Most of the important litigation involved the acquisition of land and the collection of debts. Appeals were infrequent, because the Friends were more concerned with keeping down the cost and number of lawsuits than with prolonging them by appeals.

As Professor Hall points out, "Quaker penological views were representative of the most liberal thought of the time. The most important Quaker variation from the English norm was in the punishment for crimes against property."⁴ If a Quaker was found guilty of burglary, larceny, or horse stealing, he was not hanged as under the English law; his punishment under the Quaker laws was in kind—fourfold restitution out of his estate or by his labor. Sexual irregularities were severely punished. Fornicators and adulterers were fined, and lashed while tied to the "taylor of a cart." For forgery, slander, and perjury the offender was pilloried.

The Burlington Court Book reveals that the judicial Quaker was stern, but that he was, at the same time, humane. Friends who had disobeyed the law were punished, but when they paid the penalty "the offense was forgotten and the offender resumed his normal place in the political and social order."⁵

The editing and printing of the Burlington Court Book is a significant contribution to the historical literature of our country. It is a valuable source book not only for legal historians and others interested in the jurisprudence of the early Quaker colonists, but also for those specialists who would prefer to examine the social and economic aspects of the early life of these interesting people.

FRED B. McCALL

The University of North Carolina.

³ Page xi.

⁴ Page xlvi.

⁵ Page liv.

Airports and the Courts. By Charles S. Rhyne. Washington, D. C.: National Institute of Law Officers. 1944. Pp. viii, 222. \$5.00.

The author has brought together in this book, in brief fashion and with orderly arrangement, all reported court decisions bearing on the acquisition, operation, maintenance and zoning of airports. Interspersed are applicable federal and state statutes and regulations promulgated under the Air Commerce Act and the Civil Aeronautics Authority. Mr. Rhyne is exceptionally well-equipped for this work. For a number of years, as counsel for the National Institute of Municipal Law Officers, he has been working in the field of aviation law, particularly as it relates to cities and the development of airports nearby. He is familiar with the problems of municipalities and airports and has the experience of municipal law officers in his own files. With headquarters in Washington, he also has access to the files of the Civil Aeronautics Authority.

The work is painstaking and accurate. Objection might be made to the listing and discussion of cases in chronological order under the various topics. This method tends to become tiresome and a case by case analysis under each topic results in some duplication. The author recognizes this, but sets out to present all the cases in order. In spite of this arrangement, the book is well written and interesting to anyone seeking answers to the many problems raised. Such chapter topics as condemnation, airport leases, regulations governing use, taxation and damages claims receive very brief treatment because of the paucity of decided cases. But there are three topics which the author has an opportunity to deal with more fully, (1) airport acquisition, (2) rights of landowners versus rights of aviators, and (3) airport zoning.

One of the important problems discussed under airport acquisition is whether the acquisition of land for an airport is for a public or municipal purpose. If courts should hold that bonds could not be issued and taxes could not be levied for financing the acquisition of land for public airports, the future of commercial aviation would be imperiled. The author refers to the Greensboro passenger station case¹ in North Carolina where a bond issue for the construction of a new railroad station was upheld, and to a number of decisions affirming that airports are in the public interest and constitute a public purpose.² In 1932, Professor Bohlen, a distinguished authority of the law of Torts and the Reporter for that subject in the American Law Institute, indicated a contrary opinion in a discussion of the problem of trespass in the airspace when he referred to aviation as "an activity which has not yet been recognized as of sufficient public importance to warrant the conferring upon it of the right of eminent domain, under which the neces-

¹ Pp. 26, 46. *Hudson v. Greensboro*, 185 N. C. 502, 117 S. E. 629 (1923).

² Pp. 20-29.

sary air rights could be condemned, but only upon the payment of their value."³ But such a tremendous growth and development has taken place in aviation since 1932 that Professor Bohlen's premise is no longer valid. The power of eminent domain has been conferred upon municipal and public airports whereby not only may land be condemned for runways but airspace may be condemned for the protection of airport approaches. Further than that, airport approaches may be zoned under the police power, if the model airport zoning law is constitutional.

North Carolina has upheld the expenditure of tax funds by a city to purchase property for an airport as an "admittedly public purpose"⁴ and the location of the airport outside city limits does not affect this conclusion.⁵ The statutes granting to airports the power of eminent domain usually declare the existence of a public purpose,⁶ and this legislative finding should have some weight with the courts when a case is to be decided.

The author demonstrates that there should no longer be any doubt as to whether airports are for a public purpose. In this connection an interesting statute is the special act under which the cities of Raleigh and Durham and the counties of Wake and Durham are authorized to join in providing for the Raleigh-Durham airport, situated midway between the two cities.⁷ An amendment authorized the condemnation of land on which a burial ground, graveyard or cemetery is located.⁸

The conflicting claims of landowners and aviators have come before the courts in a considerable number of important cases. Consequently this is the longest chapter in the book. Certainly there is no easy solution to this problem. Different theories have been advanced, and it is to be expected that the author would favor the theory which will tend to protect the aviator and promote aviation to the fullest. Commentators agree that the application of the strict common law view of the rights of the surface owner in the airspace over his land would hinder any development in aviation. The American Law Institute, under Professor Bohlen's direction, recognized the land owner's rights in the airspace but subject to a privilege of lawful flight.⁹ According to this view, the aviator has the burden of proving that the flight was for the purpose of travel or other legitimate purpose, that it was conducted in a reasonable manner and in compliance with state and federal regulations and that it was at such a height as not to interfere unreasonably with possessor's enjoyment of the premises. This same view

³ Bohlen, *Surface Owners and the Right of Flight* (1932) 18 A. B. A. J. 533, 535.

⁴ *Goswick v. City of Durham*, 211 N. C. 687, 191 S. E. 728 (1937).

⁵ *Turner v. City of Reidsville*, 224 N. C. 42, 29 S. E. (2d) 211 (1944).

⁶ N. C. GEN. STAT. ANN. (Michie, Sublett & Stedman, 1943) §§63-5, 63-36.

⁷ N. C. Pub. Loc. Laws 1939, c. 168.

⁸ N. C. Pub. Loc. Laws 1941, c. 292.

⁹ RESTATEMENT, TORTS (1934) §194.

is found in the 1921 Uniform State Aeronautics Act, adopted by North Carolina in 1929¹⁰ and now the law in 23 states. A privilege of lawful flight is like the privilege of navigating a stream whose bed is privately owned or the privilege of deviation from the highway. It constitutes a privileged trespass with the burden of establishing the privilege placed on the trespassing aviator.

The author approves the opposite approach of the new Uniform Aeronautical Code¹¹ by which the burden is placed on the landowner. Under this view, the landowner's rights in the airspace are ignored unless he can establish that the flight was conducted so as to involve a substantial risk of harm to individuals or property on the land and to constitute a substantial interference with the then existing use and enjoyment of the land. In the first *Hinman* case,¹² the air was likened to the sea, "by its nature incapable of private ownership, except insofar as one may actually use it." Under this theory, the landowner cannot recover except for actual damage to his land or structures thereon or for a nuisance. As between the "trespass" and "nuisance" theories, the latter seems preferable, although the landowner may have difficulty in proving damage.¹³ But from the viewpoint of expanding commercial aviation, there is no question as to the advantages of the "nuisance" theory. Perhaps the moral is not to live too near to an airport.

Airport zoning is the third subject which receives more extensive treatment. North Carolina in 1941 adopted the "Model Airport Zoning Act"¹⁴ which authorizes cities and counties to zone the area surrounding public airports. This is a practical method of insuring a safe aerial approach to public airports. The danger from obstructions on land surrounding airports is constantly increasing with the size of planes and the use of instrument landing, both requiring a longer gliding angle. An interesting analogy is the Second *Hinman* case¹⁵ where the court enjoined the landowner from erecting any structures higher than, (1) 10 feet within 200 feet of the airport, (2) 20 feet within 200 to 500 feet, 50 feet within 500 to 1,000 feet, etc. If a court may protect airport approaches in this way, it seems that a zoning ordinance to accomplish the same result should be valid. The purpose of the act, to promote the safety of approaches to public airports, would seem to fall within the police power in an age of tremendous expansion in air travel.¹⁶

¹⁰ N. C. GEN. STAT. ANN. (Michie, Sublett & Stedman, 1943) §§63-12, 63-13.

¹¹ See author's discussion pp. 109-113.

¹² *Hinman v. Pacific Air Transport Corp.*, 88 F. (2d) 755 (C. C. A. 9th, 1936).

¹³ P. 143, referring to *Burnham v. Beverly Airways, Inc.*, 311 Mass. 628, 42 N. E. (2d) 575 (1942).

¹⁴ N. C. GEN. STAT. ANN. (Michie, Sublett & Stedman, 1943) §§63-29 to 63-37.

¹⁵ *United Airport Co. v. Hinman*, 1940 U. S. Av. R. 1 (S. D. Cal. 1939).

¹⁶ See discussion of the Model Airport Zoning Act, 19 N. C. L. Rev. 548 (1941).

For city and county attorneys, this book is indispensable. For all who are interested in an up-to-date discussion of legal aspects of airport development, the book will be interesting and valuable.

ROBERT H. WETTACH.

University of North Carolina.

War and the Law. Edited by Ernst W. Puttkammer. The University of Chicago Press, Chicago, Illinois. Pages vii, 205. \$2.00.

WAR AND THE LAW might aptly be characterized as a brief summarization of some of the many effects which the present world conflict has had upon our American system of administering justice. It is the combined contributions of eight members of the faculty of the Law School of the University of Chicago who lectured to students during the academic year of 1942-43 under the sponsorship of the Charles R. Walgreen Foundation for the Study of American Institutions.

The opening lecture by Dean Wilber G. Katz points out that our social philosophy of individual freedom under the law, for which we are fighting, is causing a change in legal philosophy from law based on authority to natural law based on human reason. He then traces some of the trends in legislation, law administration, legal education and the place of the legal profession being brought about as a result thereof.

This lecture is followed by "Civil Liberties in Wartime" in which is outlined some of the limitations upon our freedom of expression and the manner in which those limitations have been enforced by the Department of Justice and the Courts. Other limitations upon personal liberties were presented in "Alien Enemies and Alien Friends" and "The Armed Forces and the Civilian Population." Even before the war resident aliens, whether characterized as friends or enemies, did not enjoy the same freedom as citizens, and the war has subjected them to additional restrictions. Even citizens, if suspected of actually or potentially being engaged in activities harmful to the war effort, may be detained and denied their freedom. Citizens also may be further curtailed in the exercise of their personal freedom where our Armed Forces find it essential to invoke martial law or martial rule.

Total war can and does have its effect on our citizenry in the form of wartime Governmental agencies. The effects of the National War Labor Board upon labor relations are discussed in "Law and Labor Relations in Wartime." The evolution of price control and its effect on our standard of living are set forth briefly in "Wartime Price Control."

Even the administration of criminal justice has undergone a vast and comprehensive change for many citizens who now are in our Armed

Forces and are subject to a special code of laws which does not affect the ordinary citizen. "Military Justice" attempts to point out some of the differences between our civil criminal code and that special code laid down for the Army in the "Articles of War" and for the Navy in the "Articles for the Government of the Navy."

Germany's development of the cartel system to disable foreign industry for war and the manner in which those international restrictive agreements operate both in this country and abroad form the background for the warning in "International Cartels and the War" that the advance of the system must be stopped if we are to win the peace as we are winning the war.

Peace on earth is impossible without the rule of law—that is, just constitutional government—and the immediate corollary, war is inevitable so long as this one indispensable condition of peace is lacking, is the thesis developed in "War and the Rule of Law."

While these nine brief lectures originally were conceived for and delivered before students, their publication cannot be justified as a worthwhile contribution to the lawyer in his professional capacity, but only as an aid to the layman in his comprehension of the effects of the present war upon the Law. But the layman may well seek assistance elsewhere. The subject is too vast for the summary treatment it receives in *WAR AND THE LAW*. The goal sought to be achieved is too ambitious for the space allotted.

CHAS. M. IVEY, JR.,
Captain, JAGD

The American Story of Industrial and Labor Relations. Albany. New York State Joint Legislative Committee on Industrial and Labor Conditions. 1943. Pp. xx, 315. \$1.00 (paper bound), \$1.50 (cloth bound).

The "first duty" of the New York State Joint Legislative Committee on Industrial and Labor Conditions, says its Chairman in the preface to this little volume, is to continuously concern itself with matters of legislative policy and administrative efficiency in the field assigned to it by the Legislature. The Committee is convinced, however, that it is not sufficient to direct attention exclusively to contemporary legislative and administrative aspects of industrial and labor relations. If such relations, and if legislation and administration relating thereto are to meet the needs of the times, they must rest on a foundation of widespread and common understanding of their true nature on the part of the citizenry. This book is the result of this conviction on the part of the Committee. "It is an effort to further popular education in the

principles and practices underlying sound industrial and labor relations." Designed for use in the upper high school years and in introductory college courses, the Committee believes that it may also be used as the basis for specialized courses in labor relations, and as supplementary reading in courses in American History or Problems of Democracy. The Committee also believes that a course in industrial relations should be offered in every high school in the State of New York.

With these sentiments the reviewer is in complete accord. He would add, as probably would the Committee, that such a course should not be confined to high schools in the State of New York; but should be offered in the schools of every state where industrial relations are of major importance, which would include most of the states.

The reviewer would further add that he knows of no single volume which even approaches the one under consideration in meeting the needs of courses such as are suggested above. It is well organized, and it is simply and well written. It is objective, straight-forward, and unbiased. It is excellently illustrated with photographs, pictographs, maps, charts, in short, with practically every form of visual aid that can be put in a book. These serve to "liven up" the text—not that the text needs "livening up"—and to clarify and drive home salient points.

Part I consists of four chapters which are largely historical in nature. The organization of the materials in these four chapters is uniform throughout. The spotlight is turned on this country as it existed in each of four periods represented by the dates 1790, 1840, 1890, and 1940. Each chapter is introduced by "The Pattern of Living" as of that period. The second topic takes note of "Signs of Economic Change." This is followed by "The Pattern of Ideas: Political," and "The Pattern of Ideas: Economic." Each chapter concludes with a discussion of "The Workers Place in American Life."

Part II, "The Rules of the Game," consists of seven chapters. These several chapters deal with the rules for employers and employees in their relationships with each other, with the various methods of helping these parties compose their differences when such arise; with workmen's compensation, wages and hours laws; and with old age and unemployment insurance. Part III deals with "The Challenge of the War—and of the Peace . . .," and considers industrial and labor relations along lines suggested by this caption.

The reviewer is again moved to express his appreciation of the high quality of the book, and of the purposes which prompted its publication. The student should find it entertaining and instructive. It should be highly valuable to the layman who wants a brief over-all picture of this field and doesn't know where to find it. Not the least valuable

part of the book is a concluding section prepared under the guidance of William B. Groat, Jr., Counsel to the Committee, setting forth an outline and materials for further study.

H. D. WOLF.

University of North Carolina.

Where's the Money Coming From? Problems of postwar finance. Guide lines to America's future as reported to the Twentieth Century Fund. By Stuart Chase. New York: The Twentieth Century Fund, 1943. Pp. 179. \$1.

This book, the third in a series published under the heading "When the war ends," has already captivated many adherents who followed its stimulating appeal. This success can easily be understood. It raises a question in which everybody is interested. Everybody is longing for an answer to the secret but vital problem of our national life with which the book deals. And this study, providing information and guidance, is popular in the very sense of the word. In a clear and natural language it shows the essence of money and certain monetary phenomena and lays in this way the groundwork for necessary action. It advances suggestions how to match the difficulties that will arise when productive capacity, developed to greatest dimensions for the purpose of war, mobilized by specific methods of financing and resulting in a tremendous increase of income, has to be reconverted into an economy whose goal is peacetime consumption. Moreover, in its character the book is truly American. It reflects the personality of a writer who has a vigorous practical mind and faces realities with vision and courage. It has the vivacity of the spoken word.

Stuart Chase reveals the mysteries of creation and use of all forms of money as governing and instigating factors of production and distribution. His starting point is a very simplified version of the income-expenditure approach of modern theory. The "potato model" he uses implies the rejection of metallism. He demonstrates the instrumental function of money to raise the existing substance of wealth and to accomplish its distribution. If this tool is wielded in accordance with its nature, its forces are called forth and used for spending and investment, it exercises dynamic effects on income and employment, while inflationary dangers can be avoided.

The varying rôle money is able to play is disclosed in the course of cyclical fluctuations. The proper process of a complete "dollar circuit," which secures the proportion between the volume of money and the value of goods and services on their way from production to the market, is pursued. Thus it can be comprehended how existing facili-

ties and resources are set into motion, how full employment may be attained and income paid out as remuneration for productive contributions and containing claims on shares of the output will be turned into active purchasing power. Obviously, the author's concern does not necessitate an all-embracing analysis of this concept.

On the other hand, the mere presentation of the rational economic pattern, although it covers actual processes, omits the great variety of conditions and motives which complicate the situation and lead to frictions and changes in economic activities. And while these elements together with other forces, which also make up and shape complex reality, are removed from the scene, historical and potential events may deviate from the described underlying course. It is, therefore, also one of the decisive propositions of the study that the adequate movement of the "dollar circuit" is continuously performed by devices of control and management. The question is whether this model of persistent motion from employment to spending and investing can be applied to an economy modified by the exigencies of total warfare.

The writer is not perplexed by the shifts a successful conduct of war requires nor by the financial consequences as long as the collection and restricted creation of monetary funds is dictated by economic moderation. Experience in all countries has proven that victory depends upon the strength of physical resources rather than financial techniques. Thus, Chase does not need resort to propaganda in order to persuade people that they must not be afraid of the immense increase of the national debt, but can convince them by relying on his sound optimism. In this regard he is in agreement with the widely acknowledged view that under the assumption of a high level of production and income, which insures its service, a debt of \$300 billions can be carried by this country. This item, whose implications are examined from various angles, is one side of the central problem of the report.

The organization of the economy which solves the transition to a production devoted to our standard of living and cultural aims in a most satisfactory manner has again become an object of passionate controversy. Hayek and Von Mises in their recent publications urge an economic system governed by the inherent forces of free competition and stress this plea by political arguments. Chase advocates a "mixed or compensatory economy." It combines elements of individualism to be used to the highest possible extent with methods of administrative planning. Only by joining both principles can in his opinion the impulses of free enterprise be strengthened and directed to the greatest use of the enlarged productive capacity that guarantees the optimum level of income and employment under the conditions of a perfect

"circuit of the dollar." A number of concrete proposals illustrate the kind of constructive management he has in mind.

Nevertheless, the suggestion of a "compensatory economy," though of practical value, is not conclusive enough, even if one believes that the lines drawn by Mr. Chase are inevitable. To be valid from the theoretical point of view, the function of an exclusive free economy, its possibilities of self-control and adjustments between monetary means and the real economic process have to be examined with profound accuracy; and also other important implications have to be taken into account. The meaning and nature of the "compensatory economy" is not sufficiently clarified as long as the respective weight of the ingredients of freedom and planning can not be determined more precisely and its duration is not designated as a permanent or temporary one. Furthermore, it has to be tested whether the utilization of productive factors in a "compensatory economy" takes place on the same basis of economic reasoning as under conditions of free capitalism. The confidence in the power of economic management may easily go too far and underrate the many disturbances and obstacles which still will remain. Even under the masterhand of planning, errors and misconceptions may occur. Insufficiency of methods and subjective attitudes may be at variance with the picture designed by imagination.

Finally, this country is neither an isolated section nor the entire economic world. If international integration and interdependence and the influence of this relationship on the domestic level of income and employment are neglected, essential parts of the problem are withheld, a shortcoming, which leads also to an underestimation of the services gold renders as an institutional device.

These considerations, however, do not reduce the particular merits Mr. Stuart's attractive book deserves with respect to its educational objectives and as a source of information. It represents a type of excellent, congenial form of public discussion.

FRANZ GUTMANN.

The University of North Carolina.

Curbing Inflation Through Taxation. A Symposium. New York: Tax Institute, Inc. 1944. Pp. ix, 261. \$2.50.

This book provides the medium for the publication of eighteen papers presented by distinguished specialists at a symposium on the curbing of inflation through taxation. The first section of the book is devoted to an examination of the earmarks of inflation as noted in the volume of consumer spending, the rise in farm and urban land values, and the increase of money in circulation. In the second section the

inflationary potentialities of the public debt are examined, while the third section examines a federal retail sales tax, spending and excise taxes, income taxes, compulsory savings, and social security levies as devices for limiting the scope and areas of inflationary trends. A fourth section is devoted to brief but informative summaries of curbs on inflation in Soviet Russia, Italy, Canada, and England, while the final section is concerned with inflationary potentialities in the postwar period and their possible restraint through fiscal policies.

The contributors to the Symposium include academicians in public finance (Arnold, Buehler, Hansen, Harris, Murphy, Shoup and Tesaro); government officials (Blough, Eaton, Gilbreth, Marioletti, and Sims); banking officials (Bussing and Eccles); business leaders and research specialists (Hughes, Nelson, Oliver and Hoyt).

As in most symposia, conflicting viewpoints emerge on certain issues; but the degree of internal cohesion is quite substantial as a result of careful planning and the organic unity of the selected topics. Limitations of space and time precluded adequate statistical support for many of the issues discussed, but the over-all picture is on the whole clearly delineated. While some of the articles involve analytical refinements, the volume is quite lucid and capable of assimilation by the layman who is not familiar with the intricacies of theory and does not wish to be confused by the multiplication of statistical evidence. In short, the papers are devoted largely to the discussion of issues, and they present in their totality a good summary of critically important subjects at this particular juncture in our history. For those readers who wish to pursue any of the topics more intensively, a brief but acceptable bibliography is provided in the appendix.

Within these designed limits, the book serves a useful purpose. Its wide distribution should facilitate an intelligent solution of the related issues of public policy.

JOHN B. WOOSLEY.

The University of North Carolina.

Our Civil Liberties. By Osmond K. Fraenkel. New York: Viking Press. 1944. Pp. x, 277. \$3.00.

It is from such a competent constitutional lawyer as Osmond K. Fraenkel that we should expect and desire a treatment of the civil liberties question, and it is in a work possessing the scope and clarity of *OUR CIVIL LIBERTIES* that we have at last realized that expectation and desire.

Foremost among contemporary constitutional lawyers on civil liberties cases, and particularly outstanding in his comprehension of those

rights protected by the First Amendment to the Constitution, Fraenkel has in this latest work augmented his list of contributions to the student and spectator of civil liberties. That list is comprised of such efforts as "One Hundred and Fifty Years of the Bill of Rights," a long and scholarly study of the subject, published in the May, 1939, issue of the *MINNESOTA LAW REVIEW*; a pamphlet entitled "The Supreme Court and Civil Liberties"; SACCO AND VANZETTI, an analytical dissertation on the case which stands out as one of the classics in the civil liberties field; and numerous and valuable contributions to the leading legal periodicals in the form of articles and book reviews. It is only logical, then, that his work should culminate in the publication of such a volume as *OUR CIVIL LIBERTIES*.

If *OUR CIVIL LIBERTIES* possessed no other virtue than its facility of reading and ease of understanding, it would have filled a long existent need—a need for a book whose plain but forceful language would bring home to the layman a full comprehension of this vital subject. Here may the rank and file find a clear and discernible guidepost, pointing in the direction of the rights which are legally theirs.¹

It is to Mr. Fraenkel's credit that he has not satisfied himself with a perusal of the interpretation by the Supreme Court of the "Bill of Rights" and the other civil rights, but has delved into cases of both federal and state courts involving issues which have never been the subjects of Supreme Court rulings.

After a full treatment of "What Are Our Civil Liberties," and "Shall Civil Liberties Be Denied to Those Who Reject Them," the author has constructed what is, in the opinion of this reviewer, a most important chapter, coming as it does during our participation in world conflict. He has entitled it "Civil Liberties in Wartime," and has very skillfully enumerated and compared the leading civil liberties cases coming before the highest court during the first and present world wars. He has also compared the convictions of the Socialists of 1917 and 1918 with those of Pelley and Christians and has revealed the interesting fact that, although the actions of these latter men would undoubtedly receive the sanction of Hitler and Goebbels, the views professed by the adherents to the theory of socialism would have found little favor in the eyes of imperialist Germany.

Mr. Fraenkel has failed, however, to comment at length on two of the most important contemporary cases. He makes no mention of the present sedition trial in Washington,² nor does he fully discuss the Minneapolis case involving the Socialist Workers Party.³ The former

¹ For a further study on this point see: Whipple, Leon, *THE STORY OF CIVIL LIBERTIES IN THE UNITED STATES*. New York: Vanguard Press. 1927; Whipple, Leon, *OUR ANCIENT LIBERTIES*. New York: The H. W. Wilson Co. 1927.

² Unreported to date.

³ *Dunne v. U. S.*, 138 F. (2d) 137 (C. C. A. 8th, 1943).

case has not proceeded to a point where a full report could be made, it is true; but the latter was easily worth more extended consideration on the failure of the Supreme Court to grant certiorari, which is—in effect—a denial of the right of free speech, provided, of course, the question was properly raised.

As the subject of another chapter entitled "Is the Bill of Rights Binding on the States?" Mr. Fraenkel has selected a fact little known even to many in the legal profession. That important fact is that, although the Bill of Rights is not binding on the states, most of the cases arising since 1927 and receiving Supreme Court decisions favorable to civil liberties have begun in the state courts and have reached the highest court *via* the due process clause of the Fourteenth Amendment. Another fact which Mr. Fraenkel brings to the attention of the reader is that the Constitution does not protect against wrongful violations of civil liberties by individuals or mobsters.

In the chapters which follow, the author discusses at length: First, the rights protected by the First Amendment; secondly, the guarantees of criminal law and procedure; and, lastly, the rights embodied in the amendments enacted to protect the negro after the Civil War. There is also an entire chapter devoted to "Labor Problems."

The last chapter Mr. Fraenkel has chosen to entitle "Uncharted Areas." It is here that he leaves with the reader the thought which he thinks of primary importance. He feels that whether or not we live in a collectivist society the citizens living in that society must be vigilant "to resist encroachment on their own liberty and especially that of others."

Seldom does Mr. Fraenkel take open issue with a holding of the Supreme Court, even though such holding seems directly adverse to civil liberty. He does make a few suggestions, however, proposing that, since Tom Mooney was convicted on perjured testimony, federal instead of state courts should pass on all questions of fact which underlie our basic constitutional rights.

The book has a glossary, complete with a discussion of all the words and phrases found in the Constitution, and the rule of the Supreme Court on "clear and present danger" in free speech cases. The court decisions to which Mr. Fraenkel has alluded in the body of the book are collected in a list and placed at the end of the textual material and preceding the index. The author might better have inserted footnotes at the bottom of each page or used some other means of reference to this list of authorities.

A recent survey revealed that less than one-fourth of the American people could give a satisfactory identification of the Bill of Rights which embodies three of the "Four Freedoms." A wide circulation of

this book would do much to alleviate this unwarranted ignorance. But, since it is hardly practical that each and every American find an opportunity to read Mr. Fraenkel's work, it is hoped that the men and women of the legal profession will study its contents and discover their import; for these men and women are in the final analysis truly guardians of our civil rights.

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