

BOOK REVIEWS

War and the Law. Edited by Ernst W. Puttkammer. *Walgreen Studies of American Institutions.* Chicago: University of Chicago Press, 1943. Pp. vii, 205. \$2.00.

This rather small book, carrying a full load of thoughts and ideas, and written by eight University of Chicago Law School professors who know something whereof they speak, is the subject of this short review. Dealing with different legal and semi-legal questions which the war has provoked, there are nine solid, and to the student, interesting lectures, entitled *World War II and Legal Trends*, by Dean Wilber G. Katz, *Civil Liberties in Wartime*, by Kenneth C. Sears, *Alien Enemies and Alien Friends*, by Ernst W. Puttkammer, *The Armed Forces and the Civilian Population*, by Max Rheinstein, *Law and Labor Relations in Wartime*, by Charles O. Gregory, *International Cartels and the War*, by Edward H. Levi, *Wartime Price Control*, by George F. James, *Military Justice*, by Max Rheinstein, and *War and the Rule of Law* by Mortimer J. Adler.

The subjects are all intriguing, but how about the treatises? Do they deal with or relate to their subjects? Are the ideas fresh, or are they musty with the odor of aged precedents? I presume the reviewer can and should tell his reactions—hopeful, if not expectant, that they will be the same as the normal reader's.

Brevity would suggest that the lectures be treated as a group. If so, brevity would be at the expense of intelligent appraisal and helpful information. Each must be treated separately, however cursorily.

Each lecturer, I regret to say, or I am proud to observe (I hardly know which), begins his discussion as though he were about to write a dissenting opinion—ready to attack on any or all fronts—in a word, hostile. And such introduction is no false augury of the substance of all the articles. There is no lecturer who champions the philosophy of "whatever is, is right." Intelligent kindness to change rather than fondly wedded to the status quo, looking forward eagerly, rather than backward fondly, I would say, is the common viewpoint of all.

The first lecture, by Dean Wilber Katz, is naturally more or less general. Out of a brief historical discourse on the natural law and its subsidence or disappearance, he emerges with a plea for a more cordial view of the appearance, growth, and use of administrative boards, acceptance of the modifications of the law of contracts evidenced by the renegotiation of war contracts, the suspension and disappearance of free market price fixing, the change in the institution of property as effected by the Government's power to, and the exercise of its power to, tax, and, finally, the attitude of the lawyer and the necessity, if he is to hold his prominent place in society, of greater adaptability on his part to meet the changes which he finds everywhere about him.

Professor Sears deals with the interesting and somewhat more specific subject of *Civil Liberties in Wartime*. I can not say that specificity is the striking characteristic of the questions raised or the answers given, which this subject presents. I can best avoid

trouble by saying that an opinion written by me has led Professor Sears to a somewhat critical study and analysis of the Supreme Court decisions which deal with the use of the words "clear and present danger" as a necessary showing in prosecutions under the Espionage Act. Professor Sears plants his doubt as to the necessity of a showing of "clear and present danger" on the holdings of the Supreme Court in criminal contempt cases. Whether criminal contempt in peace times is controllingly analogous to prosecution under the Espionage Act, a wartime measure, is his question. It is my belief that all citizens, and the inferior federal courts and the lawyers too, will best serve their community and clients by generally advising them to follow the opinion of *Schenck v. United States*. Such advice may well be described as in good conscience, good citizenship, and good law.

On Alien Enemies and Alien Friends, an especially appealing subject, Professor Puttkammer has taken such a broadly liberal, humane view, that one is surprised to find himself placing question marks after assertions which are in harmony with the general tone of the article. Here factual questions protrude and on such questions differences of opinion are sure to exist. Professor Puttkammer discusses seriatim (at the same time hastening to point out that in the greater number of instances there is in fact no discrimination against aliens) the denial or attempted denial of the right to engage in certain professions, the several federal legislative acts requiring registration, disclosure of property, and restriction of free movement, public ignorance resulting in discharge from legitimate employment of aliens solely because of that status, the alien's duty to perform military service, the great necessity for simplification of the naturalization process, changing of requirements regarding proof of legal entry, and the anomalous position of native women married to aliens who subsequently become naturalized. Only by reading the article can you place your question marks. I might not express your doubts by my ? ?.

In War and the Rule of Law, Professor Adler is certain and positive. Doubt has little place in his logic. His prophecies are likewise certain, not to say dogmatic. Interesting, if not entirely persuasive, are his prophetic assurances that perpetual and universal peace will come through "the establishment of the constitution of a single government" in "which all men will participate," and secondly, such a peace will not follow this war. The end of this war will witness another truce on a larger scale, "more deceptive talk," "about covenants and world courts," more war of words between diplomats, and "another war at a not too distant future." All readers will, however, be overjoyed to know that there is an exception to the saying that "the power of prophecy dwells no more with man." With like confidence, we are told of the somewhat simple formula whereby this universal, lasting peace may be obtained. The remedy is almost self-evident. It is all so simple, yet so readily understood, when once we realize that war is a "curable social disease" and curable by law, because, as all good medicine must, law goes to the root of the disease. I fear some readers may not be as confident as Professor Adler, but we are nevertheless indebted to him and also refreshed by his long-range vision and the confidence with which the future is pictured.

Professor Levi's lecture on International Cartels and the War deals with cartels, which are Frankenstein monsters—international monopolies that strangle and choke national monopolies and entirely wipe out smaller, though sizable business institutions. Do you like detective stories? Professor Levi gives one here wherein General

Electric plays the role of the villain, Westinghouse Electric, a minor, but vile, partner. Germany is Satan, and I. G. Farbenindustrie of Germany, Imperial Chemical Industry, Ltd. of Great Britain, Standard Oil of New Jersey, and E. I. Du Pont de Nemours are the "major kingdoms in this world order." Lesser but nevertheless luminous are Siemens & Halske of Germany, the General Electric Co., and the Aluminum Company of America. The world's trade is now controlled by cartels, aided and abetted by patents, so Professor Levi writes. Although the subject includes the war, the monsters (cartels) reached their size before the war and have not fed themselves fat on war activities. Fear of results after the war, rather than during the war, is Mr. Levy's worry. The writer evidently believes in "Bigness" there is danger. Bigness is stressed and feared. Patents are powerful allies and furnish the sustenance upon which the growing monster thrives. One given much to worries will be unable again to get into bed without first looking underneath. Professor Levi has written something to awaken worries and anxieties even though General Electric Co. has seemingly behaved quite nobly and worthily during this war.

Professor Gregory gives us a clear, fair, informative treatise on the activities of the War Labor Board and the National Labor Relations Board in wartime in his lecture on Law and Labor Relations in Wartime. Most of us know a little about labor troubles. The same number have strong prejudices one way or another, respecting labor during this war. We get better acquainted with the facts and both sides of the question after reading this lecture. He thinks that there are jobs easier than those carried by the War Labor Board.

In the chapters Armed Forces and the Civilian Population and Military Justice, Professor Rheinstein is dealing with highly practical problems. His discussion of the need for, and legality of, a military regime in Hawaii both at the time of, and long after, the Pearl Harbor catastrophe, and the evacuation of persons of Japanese ancestry on the West Coast, is frank and documented with interesting excerpts from the Supreme Court opinion in the *Hirabayashi* case. The conflict between established rights of civilians, especially citizens, and the superimposed and omnipotent military regime is viewed in the realistic light that reasonableness of action on the military's side is all that is necessary. The practical exigencies of the situation require drastic action, although in some cases, such as those involving American citizens of Japanese ancestry, there was possibly a denial of equal protection of the law.

The chapter on Military Justice concerns a discussion of the gradations of courts-martial and their personnel and procedure, and is aided by the lecturer's comprehensive knowledge of comparable courts in European countries, as well as of our own civil and criminal courts. The presence of persons of equal rank with the accused on the personnel of German courts-martial, presumably to represent on the tribunal the accused's viewpoint, is approved. The absence of appellate review, in the ordinary sense, is inferentially condemned. The extreme differences between courts-martial and their civilian counterparts are presented so that the reader is enlightened, though not absorbingly held, by the discussion.

Professor James writes a lecture on War Time Price Control. The subject is one to conjure with. Of wider interest than all other subjects to the citizen, and the football of political writers and critical politicians, not only is it a controversial subject of fact dispute, but its enforcement presents many unique legal problems which delight the

legal profession and cause the businessman, who loves to damn the Government, whether it acts, or fails to act, to tear his hair. Professor James' article is largely historical and avoids the knockdown and drag out legal and sound public policy questions which all of us have heard and many of us have participated in.

EVAN EVANS*

Cases and Materials on Possessory Estates. By Richard R. Powell. Second Edition. St. Paul: West Publishing Company, 1943. Pp. xxxix, 565. \$5.00.

Compared with the edition of 1932, the volume under review constitutes an extensive revision of materials, but the basic structural plan is unaltered except for the desirable addition of a new section on estates for years. Of the eighty-one text cases in the first edition only thirty-one are included among the eighty-five text cases of this edition. Of these last, fifty-two were decided in this century and twenty of them since 1932. The substituted cases are better, particularly from the viewpoint of the instructional problems presented. Lengthy treatments of such historical bric-a-brac as scintilla juris, writs of formedon, and the fine and common recovery are wisely excised. Treatment of the fee tail is reduced to a size more commensurate with its relative importance. Jurisprudence material, including an excerpt from Digby concerning medieval reification of property concepts, has been conveniently dropped. However, such material is not out of place here because American law school custom generally reserves the subject as such for graduate study, and forces the undergraduate to take his jurisprudence in snippets, spliced on other courses. Two-fifths of the volume is text, including selections from various text-books in the field, Restatement material, and valuable illustrations of modern statutes. But the bulk of the text material is historical and taken in large part in the form of excerpts from the Bigelow and Madden *Introduction to Real Property*.

Content and organization of material portray an understanding grasp of the difficulties involved in introducing the beginner to the subject of real property. On the whole, the volume is excellently designed for the accomplishment of this objective. The book is conveniently divided into two parts. The first part includes the all-important scheme of legal estates as modified in equity. The second part covers the conventional aspects of possessory estates.

There are several details of inclusion with which the reviewer does not agree. The material concerning "the methods whereby an acknowledged power to transfer an estate in fee simple can be exercised" concludes with a "greatly simplified" statement of the facts along with the holding in *Wolfe v. Henry Shelley*.¹ But this case, which first applies to the heirs of the body an ancient rule governing a similar limitation to heirs, illustrates a conveyance effective at common law to create a fee tail, not a fee simple.² While this rule has been anticipated in the text,³ nevertheless as a formal introduction to the famous godmother of the Rule in Shelley's Case, the abbreviated form here presented seems rather like parading her on the ballroom floor in a chemise instead of an evening gown.

* Senior judge, United States Circuit Court of Appeals, Seventh Circuit.

¹ P. 83.

² Hargreaves, Shelley's Ghost, 54 L. Q. Rev. 70, 76 (1938).

³ P. 60.