

Witnesses there would have been no civil rights cases comparable in importance to those in the First World War. It is comforting to be able to quote Professor Reppy's statement that "by and large our liberties have been well preserved during the War period." The legal historian of the future will note that in 1943 "the Supreme Court of the United States has not ceased to shine as our brightest jewel," but by 1944 "the Supreme Court was the subject of pointed criticism." So sudden a shift of opinion is startling.

Perhaps the most valuable chapters in the Survey are the ones by Dean Vanderbilt on Administrative Law and on War Powers and Their Administration because they analyse in a brilliant manner what is the outstanding development in modern government, not only in the United States but throughout the world. No more illuminating remark has ever been made than his comment that "*inter arma silent leges* is the most obsolete of legal sayings." In seventeen pages he lists the various agencies which sprang into existence during the war, most of these being directly responsible to the President. In England new agencies were also created, although a far smaller number; but they were usually responsible to a Minister who in turn was responsible to Parliament. It is not easy to say which system gave the better results—under the American there was too little co-ordination, while under the English an undue strain was placed on a few men.

The problems of administrative law are not, however, limited to those arising during the war period. The methods and extent of delegated legislation, and the system of procedure to be adopted by quasi-judicial administrative tribunals are two questions which have given rise to conflicts of opinion both in the Courts and in the law schools. In this connection it is interesting to follow in the pages of the Survey the development of the movement for reforming federal administrative procedure which has finally attained its goal in the federal Administrative Procedure Act, 1946.

When we turn from public to private law we find the Survey equally useful. Here the selection of cases has been carried out with special rigidity because in the 1944 Survey the chapter on contracts occupies only eleven pages, the one on torts twenty-nine pages, and the one on criminal law (which seems to be oddly classified as private law) sixteen pages. As these subjects are of general interest it might perhaps be suggested that they might be given more space in future surveys, while those chapters dealing with more technical subjects might be curtailed.

A final word must be said in praise of the excellent format of the Survey. Although each volume contains more than 1200 pages, it is not unduly heavy, and the type, while not wasting any space, is pleasantly clear. These physical qualities are especially advantageous in a book which most readers will be tempted to read for many hours at a time.

A. L. GOODHART*

The Alien and the Asiatic in American Law. By Milton R. Konvitz. Ithaca: Cornell University Press, 1946. Pp. xiv, 299.

This is, first of all, a useful book. Its usefulness lies in the methodical fashion with which the author reviews the pertinent statutes and Supreme Court decisions. Professor Konvitz is exclusively concerned with aliens and American citizens of Asiatic

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ancestry. He discusses, *seriatim*, 1) legislation limiting immigration and the Supreme Court's approval of immigration exclusion on the criterion of race; 2) the government's wide powers to deport aliens; 3) the restrictions (racial and otherwise) upon those who would become citizens by naturalization; 4) the power of government to denaturalize citizens; 5) the restrictions placed upon aliens with respect to intermarriage, land ownership, vocational and professional activities, hunting and fishing, school attendance, and the teaching and use of foreign languages; 6) the attempt of Pennsylvania to enforce a peacetime registration of aliens; and 7) the wartime evacuation of Japanese-Americans from the West Coast.

The discussion of each one of these subjects is handled with admirable simplicity and clarity.

Professor Konvitz's value judgments are biblical. Leviticus appears on the title page: "And if a stranger sojourn with thee in your land, ye shall not vex him . . . thou shalt love him as thyself." The author is uncompromising in hewing to this line. Among other things, he attacks the Congress for establishing the principle of racial exclusion in our immigration policy. He attacks the national and state legislatures for the manner in which aliens have legally been made to face discrimination. He attacks the category of "second-class citizenship" into which naturalized citizens are forced from time to time. He attacks the principle and execution of the wartime evacuation of Japanese-Americans. He attacks the Supreme Court for approving all of this and speaks with approval when the Court has narrowed the effective scope of discriminatory practices.

The legal and moral persuasiveness of Professor Konvitz's arguments largely depends upon the reader's own value judgments. This reader, for one, stands in near-complete agreement and applauds the presentation of the case in so vigorous a fashion. He only regrets 1) that a fuller presentation was not given the opposite arguments in the controversy so that they might have been revealed in the dim light of their own intellectual poverty; and 2) that so much weight was given to the polemical (and sometimes unverified) statements of other commentators.

But this is a secondary criticism. More fundamentally, the volume fails to accomplish in an adequate fashion one of its avowed purposes: "to make a contribution to the field of legal and political sociology."¹ For example, one of the most significant series of events with respect to American policy towards aliens and Asiatics occurred within the brief five-year period between 1942 and 1946. On the one hand, national policy became remarkably more liberal, as in strengthening the rights of aliens once subject to deportation;² strengthening the right to become naturalized;³ strengthening the naturalized citizen's position against denaturalization;⁴ and granting naturalization privileges to Chinese (1943), Filipinos (1946), and Asiatic Indians (1946). On the other hand, and in a directly opposite trend, there occurred the Japanese evacuation which the American Civil Liberties Union has called "the worst single wholesale violation of civil rights of American citizens in our history."

¹ P. vii.

² *Bridges v. Wixson*, 326 U.S. 135 (1945).

³ *Girouard v. United States*, 328 U.S. 61 (1946), overruling *United States v. Schwimmer*, 279 U.S. 644 (1928), *United States v. Macintosh*, 283 U.S. 605 (1930), and *United States v. Bland*, 283 U.S. 636 (1930).

⁴ *Schneiderman v. United States*, 320 U.S. 118 (1943).

In the explanation of these contrasting events lies a fertile field for research in legal and political sociology. Professor Konvitz mentions each of these events. But his segmented case-book approach leads him to ignore their larger inter-relations.

Professor Konvitz also does not do justice to the strength of organized public sentiment behind this country's immigration policy. That policy—insofar as it has affected Asiatics—was dictated to the nation up to 1943 by Pacific Coast groups. This is true from the very first Chinese Exclusion Act to the recent *déportation* of those American-Japanese who became the "spoilage" of the evacuation. Yet nowhere in Professor Konvitz's volume does one catch this significant sociological fact, nor precisely understand how close is the connection between West Coast race-baiting and the Supreme Court rhetoric. Professor Konvitz knows pressure groups are at work. But he records neither their permanence nor their potency.

His lack of sensitivity on this score occasionally traps him. Thus he repeats with approval Ichihashi's error that there was "no need" for the 1924 act barring Japanese from immigration because Japan "did not violate the Gentlemen's Agreement."⁵ The same line of reasoning could be used to prove the lack of "need" (from the viewpoint of national policy) of virtually every one of the Oriental discrimination laws. What this overlooks is the fact that there was another "need" behind these acts, no less potent as a social force for the fact of its national irrelevancy. This was the "need" of those on the West Coast to use the racial issue to engage in political fortune hunting or to profit economically or simply to preserve the West Coast as a "white man's Paradise." These were the social verities of the case. These were the true "needs" demanding satisfaction. These should have—but did not—concern Professor Konvitz in his construction of a political and legal sociology.

In a very real sense, then, this volume is a meritorious preface. It provides the case-book background for a larger and more difficult intellectual task. From it, also, should be constructed a positive recommendation for American legal policy with respect to the alien and the Asiatic in the years to come.

MORTON GRODZINS*

Brandeis: A Free Man's Life. By Alpheus Thomas Mason. New York: The Viking Press, 1946. Pp. xiii, 713. \$5.00.

Mr. Justice Cardozo had come on a Monday afternoon to one of the famous Brandeis teas. He was telling how much he had appreciated a gift of a book from a lady in New York. "I am an exile here," he sighed, a wan smile on his pale, mild face, "How often I long for New York. It was a pleasure for me simply to stand on Fifth Avenue and watch the stream of people go by." At that moment Brandeis was sitting on his sofa, the center of a little tight circle of eager listeners and talkers, but he probably had heard. Later when Cardozo was going, he came up quite deliberately to him with his bright, benign smile, put a fatherly arm around Cardozo's shoulder and said, "Come and sit down and let us talk a little."

The incident illustrates for me Brandeis' remarkable at-homeness in the world, his comparative freedom from nostalgia. This trait was at the same time his strength and his limitation. It was this, I think, which underlay the remarkable integration of his

⁵ P. 23.

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