

Read this book. If you are in search of thrills, you will find them; if you are a student of courtroom technique, it is here revealed. If you believe in justice but would like to learn how difficult it is to obtain it, study here the record of one who knew how. If you are interested in human nature, read here of a man to whom it was an open book. I congratulate Mr. Reynolds upon a splendid performance and especially upon his choice of a subject.

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**The Right To Organize and Its Limits.** By Kurt Braun. Washington, D.C.: The Brookings Institution, 1950. Pp. xiii, 331, including Index and Table of Cases Cited. \$3.00.

In this volume the author has attempted to present a scholarly, generalized comparison of the American and the European concepts of the evolution of the right of the working man to organize and the limits to such right.

The author has drawn upon all fields of available knowledge. References to law, both legislative and judicial, economics, politics, and a bit of sociology and psychology, appear in the various pages. In the present state of overwhelming but uncollated social data, social knowledge concerning labor problems is at the same time one of the most unscientific bodies of knowledge and one of the most fruitful. This work reflects both of these characteristics. The author is preparing a comprehensive study of what he calls the "rights and duties of organized labor groups in the United States and selected European countries." This volume represents his work on what he calls the "right to organize" which is only one phase of the broad field. The author, while apparently aware of the dangers of overgeneralized presentation (p. 32), nevertheless states his goal to be that of presenting a descriptive, that is, objective, approach toward "the right to organize and its limits." He states his generalized description without basic criticism or valuation (p. 12).

In order to properly evaluate this work, it is essential to grasp and understand the author's analysis. His subject is divided as follows:

(1) The evolution of the right to organize; (2) an analysis of the nature and protection of what the author describes as the "freedom to organize" but which he treats the same as "the right to organize"; (3) a consideration of the nature of what the author treats as the necessary concomitant to the right to organize, which he divides into two subheadings, (i) the "Compulsion to Organize"; and (ii) the "Right of the Individual to Work," that is, without association. Under each of the foregoing headings there is presented in review the author's generalized observations concerning the United States and selected European countries, mainly consisting of the United Kingdom, France and Germany.

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The author has doubtless intended to give us broad historical trends as distinguished from detailed analyses of shifting union-management-government relationships. Generally speaking, he has accomplished this purpose. But the "generalized" nature of the author's work necessarily means that he cannot present or discuss in detail the data which lead to his conclusions concerning the trends. Consequently, this volume serves well as an introduction to the subject but not as the authority.

Nevertheless, certain evaluations come to the mind of the reviewer. First, the basic analysis of the author may be misleading in its content and its simplicity. Dogma involving a difference between the positive right to association and the negative right to refrain from association, the right to work of the individual worker free of the association, are rhetorically appealing but historically unreliable. Lawyers have recognized the errors committed by courts through an uncritical acceptance of this and similar dogma. The attractive dichotomy adopted by the author is reminiscent of the use of similar simple but elusive concepts revealed in many decisions of the United States Supreme Court between 1900 and 1935 where, by the use of such general concepts as freedom of contract and right to work, bases were found for invalidating such basic labor legislation as that relating to hours of work or that outlawing the "yellow dog" contract.

Candor compels recognition of the accuracy of the author's reference to "the negative right of association" or "the negative right to refrain from association" or "the right to work," for some of these nebulous "rights" were expressly formulated in certain language of Section 7 of the Labor-Management Relations Act of 1947. But legislative error is on no higher plane than judicial error.

Here again, the mere legislative statement of a question-begging concept provides substantial danger of being led into error. And careful consideration of another paragraph in Section 7 of the Labor-Management Relations Act of 1947 raises a question concerning the "trend" conclusion drawn by the author. Section 7 did not withdraw or amend in any particular the general provisions pertaining to the basic purposes of the National Labor Relations Legislation, namely, the restoration or the introduction to equality of bargaining power between the employee and employer. The 1947 Congress did not apparently intend to eliminate that trend or concept. Emphasis by the author upon the introduction of the right to refrain from joining a union may simply be the selection of a datum upon which a conclusion could for the moment be based, but which the historical future may teach us was not a true trend at all.

Some of the specific statements require comment;

The statement in the preface (p. v) by Prof. Moulton that the basic principles used in deciding labor issues are the same in Western Europe's governments as in the United States is not completely in accord with the author's analysis. The author recognizes many important differences between the approach to solution

of labor problems in the United States as compared with the selected European countries (pp. 9 et seq.; pp. 229 and 272 et seq.). This error is understandable if the concept of the right to work dichotomy is considered as the basic principle to which the prefatory note has reference. A recognition of this principle as only a tool, coupled with the realization that the difference in the trends is not the same in the compared countries because social conditions differ, permits us to reach a more objective and accurate statement of the results.

The author suggests (p. 313) that the negative freedom of association doctrine has been generally accepted by management and labor. The reviewer believes that insofar as labor is concerned, this statement is not precisely correct. Labor recognizes that a problem with regard to "compulsory unionism" exists, but claims that social conditions require the rejection of such doctrine.

The author apparently believes (p. 319 and elsewhere) that the provisions of the United States National Labor Relations Act, providing in substance for creation of bargaining units by decision of a government administrative body, is an important factor in causing different thinking by American trade unions. But factually speaking, since designated bargaining units are in practically all cases represented by unions, the fact that there is a preliminary administrative step required in the representation by a union is of no great significance insofar as the essential problem of organization is concerned.

The author states (p. 248) that the right to work either in employment or independently is incident to freedom of an individual by rights guaranteed by the 14th Amendment, and he cites *Barbier v. Connolly*, 113 U.S. 27 (1884), and *Yick Wo v. Hopkins*, 118 U.S. 356 (1885). The reviewer believes that it has been pretty well established that decisions of the United States Supreme Court subsequent to 1935 have either greatly modified or substantially rejected the analyses and conclusions of these two decisions of an era long distant and almost forgotten. Unless the doctrine of "natural rights" is re-established in our jurisprudence, these two decisions do not support the proposition formulated by the author.

The author's technique and approach render valuable service in the field of social science from the point of view of acquainting the casual reader with the "high spots" of the troublesome social question of the trade union as a wise and socially useful institution in the United States and in the selected European countries. However, the volume's value in presenting such generalized comparison is at the same time a defect if the volume is to be considered as something other than a bold pioneering attempt to state the outlines of a difficult problem. The book is a beginning—it is not the end.

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