tain parts of the book are meant to be 'studied'; others are included only for reading; and still others may well be skipped by the general user and be looked up only by those who are specially interested in a particular set of problems. . . . One point ought to be kept firmly in mind, however. I do not regard it as necessary or even advisable that a course on decedents' estates should cover everything that is covered in this book. Every instructor will have to make a choice which may or may not coincide with that just stated here. For whatever field an instructor may decide to emphasize, however, I hope I have provided him with sufficient material."

This is an honest position; much can be said for it. Much can be said against it, however, and it is feared that it will run counter to the prejudices of the average teacher. A publisher's representative lately said, in substance, to the reviewer: Teachers clamor for shorter books—but when they come to write their own they refuse to keep them down. This particular prejudice the reviewer shares. He is committed by preference and practice to the integrated casebook intended to be used substantially as a whole. It seems to him an important part of the editor's job to delimit and chart the parts of the subject matter which should be studied by the student and to devote the space at his disposal to dealing with those parts so as to suggest best both their interrelations and their relations with parts of the subject which have been excluded as a matter of necessity. However, it is only fair to Mr. Rheinstein to say that in his preface he has given a list of cases which he states to be his own personal choice. This should be immensely helpful to the beginning, or not very experienced, teacher.

These may be humble, even sordid, matters, but they cannot be overlooked. Everyone who still teaches Wills and everyone who has ever written a casebook in any subject will be interested in this one and curious to observe its reception. It is not necessary to add that none of the speculations just set forth are intended to qualify in any way the reviewer's opinion that this is a notable, indeed a brilliant, book, that it deserves success, and that it greatly enriches the literature of the field.

Philip Mechem*


One gets an eerie feeling reading Federal Protection of Civil Rights—Quest for a Sword. Written by Robert K. Carr, Professor of Government at Dartmouth University and recently Executive Secretary of the President's Committee on Civil Rights, it contains a complete, accurate, and highly analytical study of the law governing federal protection of civil rights. The history of that law as it developed under the Reconstruction Amendments is well presented. There is a detailed description of the nine-year history and work of the Civil Rights Section of the Department of Justice and of the problems, legal and political, which it has faced. An appendix supplies the text of past and present federal civil rights laws. The book is certain to be of value to any attorney who has occasion to deal with the thorny problems which it covers so thoroughly.

Still the reader who has any familiarity with the facts with which the law of civil rights is supposed to deal—the widespread and all-pervasive violations of the guar-

* Professor of Law, University of Pennsylvania.
 antees of our Constitution—can only be continually reminded by this study of the wide gap between the results of the puny efforts of the Civil Rights Section and the job which really needs to be done. The fact of the matter is that, regardless of what the courts have said, the simple requirements of the Thirteenth, Fourteenth, and Fifteenth Amendments are widely ignored; and these requirements are not ignored merely where application of those Amendments is open to question.

The Fourteenth Amendment requires equal treatment of persons of all races and religions by state governments. The Fifth Amendment imposes the same requirement on the federal government. Yet discrimination in government employment in Washington and in every state is a commonplace. The segregated school system is not limited to the South; in the North, where it rests most frequently on segregated housing patterns, schools in Negro districts usually compare unfavorably with those in white districts. Government-financed housing is regularly established on a segregated basis and rarely are the separate facilities equal. The uniform failure of southern states to maintain equality in their segregated parks, recreation grounds, swimming facilities, and other state services is undeniably established.

The Fifteenth Amendment prohibits discrimination in the right to vote. Yet when Mississippi election officials admitted that they placed special burdens on Negroes attempting to vote in the 1946 senatorial primary,¹ no action, civil or criminal, was taken against them. The “Boswell Amendment” in Alabama which requires voters “to understand and explain any article of the Constitution of the United States”² is offered by “white supremacy” advocates as the answer to the Supreme Court’s white primary decisions³ on the frank assumption that the tests will be applied discriminatorily.

Nevertheless, Professor Carr’s book reads much the same as would a treatise on the subject of larceny, alimony, or powers of appointment. This is no criticism. Professor Carr has accomplished brilliantly exactly what he set out to do. But his study must give the legal profession food for thought. Are the forces of law and order, for which lawyers are largely responsible, really powerless to effectuate the law of the land?

Professor Carr’s subtitle, “Quest for a Sword,” refers to the fact that constitutional guarantees have been looked on primarily as a shield against oppression by government rather than as a positive weapon to be used by the government to protect individuals from oppression by others. Of course, the failure of the individual states to exercise their ordinary police powers to curb mob action is a potent factor in maintaining the system of second-class citizenship. However, this aspect of the problem can be overemphasized. The prejudices which prompt mob action are reinforced and perpetuated by the acceptance and application of those prejudices by the states in their own affairs. It may be true, as Professor Carr says, that “no express constitutional sanction exists” for federal “sword” action against state inactivity, but there is no doubt as to the power of the federal government to move against affirmative discrimination by the states.

By effectively enforcing the restraints which the Constitution lays exclusively on the states, and by setting its own house in order, the federal government could ac-

³ Smith v. Allwright, 321 U.S. 649 (1944), and cases there cited.
complain a great deal. An expanded and completely reorganized Civil Rights Section under dynamic leadership could, for example, prosecute discrimination by state officials whenever it occurred. It could urge upon the Supreme Court that the decisions of the last century which crippled the administration of the Reconstruction Amendments were wrongly decided. If it did no more than insure to all groups the right to vote, it could make public officials more aware of their duty to protect all, and not merely some, citizens. Professor Carr shows not only that additional legislation would make the task of the Justice Department easier and the scope of its activities more broad, but also that there is ample room for effective action under existing laws.

Furthermore, a uniform policy of nondiscrimination and nonsegregation in federal government activities would set an example of democratic living which would shape attitudes more effectively than any kind of exhortation. The President's Committee on Civil Rights, on which Professor Carr served as Executive Secretary, reported that even a short-lived and limited suspension of the policy of segregation in the United States armed forces during the war made substantial inroads on the prejudices of many of the soldiers who came in contact with mixed Negro and white companies. The present acceptance by the federal armed forces of the policy of segregation has the effect of spreading prejudice to areas where it might not otherwise exist. Adoption of the opposite policy would have the opposite and manifestly desirable effect of reducing existing prejudice. Denial of federal appropriations to all discriminating agencies, whether federal, state, or private, is certainly in accord with accepted constitutional principles.

Vigorous action on the part of the federal government faces many practical obstacles, some of which are described and illustrated in this book. Notable among these is the reluctance of federal and state agencies to investigate, of United States attorneys to prosecute, of juries to indict and convict, and of judges to impose appropriate sentences. These obstacles cannot be overcome by what Professor Carr calls, with convincing supporting evidence, the "unduly cautious" policy of the Civil Rights Section. Summary replacement or removal of recalcitrant attorneys, insistence on nondiscriminatory selection of federal juries, elimination of the pattern of segregation in federal courthouses, prosecutions repeated often enough to arouse community distaste of unjust acquittals—all these largely unused devices are available.

Whether or not to use these devices is primarily a political question. Only a fully

---

4 For example, The Slaughterhouse Cases, 16 Wall. (U.S.) 36 (1873); United States v. Harris, 106 U.S. 629 (1883); Civil Rights Cases, 39 U.S. 3 (1883); Plessy v. Ferguson, 163 U.S. 537 (1896).

5 "To Secure These Rights" 82-85, 87 (Gov't Printing Office, 1947).

6 This proposal was advocated in the Report issued by the President's Advisory Commission on Universal Training (Gov't Printing Office, 1947), at 42:

"Segregation or special privilege in any form should have no place in the program. To permit them would nullify the important living lesson in citizenship which such training can give. Nothing could be more tragic for the future attitude of our people, and for the unity of our nation, than a program in which our Federal Government forced our young manhood to live for a period of time in an atmosphere which emphasized or bred class or racial differences."  

7 A subcommittee of the House Appropriations Committee inserted a proviso in the 1949 Labor-Federal Security Appropriation Bill barring Federal funds to schools engaging in racial or religious discrimination. The proviso was stricken by the full committee, and an attempt to restore it on the floor of the House, on March 8, 1948, was defeated 40 to 119. 94 Cong. Rec. 2431-32 (1948).
awakened people can obtain the kind of federal action outlined above. The legal profession, however, can and should familiarize both itself and the lay public with the ample powers which the Constitution gives the federal government to halt practices which form an important part of the structure whereby civil rights are denied to many of our fellow-citizens.

JOSEPH B. ROBISON*


This is probably the most exhaustive study of recognition ever published. It is first of all to be noticed that recognition presupposes a congeries of independent states with no superstate in existence. Acknowledgment of the impossibility of a superstate, in which the author had great faith, must have caused him some regret. The work is divided into four parts. Part I discusses the legal nature of recognition and whether it fulfils a declaratory function, as the Institute of International Law supposes, or a constitutive function, as most authors assume. The author leans toward the constitutive view, since no state can have international intercourse without prior recognition. As a matter of fact, it is believed that while recognition is constitutive in that sense, it is also declaratory in assuming the prior existence of the state recognized. The reviewer would go further than the author in insisting upon its legal characteristic. There is responsibility not only to the parent state for premature recognition, but to the new state for tardy recognition. The fact that recognition is both legal and political at the same time should not cause astonishment, for that is true of many international acts. The reason why the legal characteristic has been overlooked is that few cases are known in which responsibility has been claimed, it being difficult to put a money value on such a delinquency. But that there is a duty to recognize a new state, regardless of one's wishes in the matter, cannot be doubted.

Part II deals with the special problems raised by the question of recognizing new governments in existing states. While to some extent the tests for recognizing new states are applicable, some additional problems are raised. The author indicates his allegiance to collective security in the sense that he would have recognition collectivized. It is undoubtedly true that one of the difficulties is that the new state or government exists or acts for more than the specific number of recognizing states. The question always arises whether a non-recognizing state is bound.

Part III deals with the recognition of belligerency and insurgency and the special problems created by those phenomena. Is recognition due the insurgent state or due the recognizing state? Who can claim it as a matter of duty? We are inclined to follow the author in his predilection for duty to both the insurgent and the recognizing state, the latter of which, as a general rule, must have some maritime interests involved. The author pays inadequate attention to the revolution created by Woodrow Wilson's pursuit of Huerta, whom he drove out of Mexico in execution of his quixotic idea that he could make the change of governments in Latin America constitutional. Only a person obsessed with the notion that he could improve international relations—and

* Commission on Law and Social Action, American Jewish Congress.