The Legal Status of the Tenant Farmer in the Southeast by Charles S. Mangum, Jr.

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ficiently constrained private officials who interfere with private rights: the president of a real estate board has more control over the residence of races than a mayor. Indeed, Pekelis argues that "the protection of individual rights is the primary, direct and basic content of constitutional guarantees, rather than a derivative and indirect result of restraints on governmental power." The bearing of this philosophy upon segregated schools, licensing of radio stations, defense of groups against racial libel, and similar problems is explored in the several essays. "A private government must behave in accordance with the same principles of decency which are imposed by the Fifth and Fourteenth Amendments upon a legislature...."

Exemplifying the second theme in the book are the essays supporting his assertion that "a jurisprudence of welfare is in no way inconsistent with that of government by law." Tracing the history of our legal system, Pekelis contends that administrative law is a natural outgrowth, inconsistent with civil law systems, that provides a mechanism short of totalitarian controls for insuring government responsive to welfare traditions. He bolsters this position by a long comparative study of "legal techniques and political ideologies."

These essays have one shortcoming. Too little attention is devoted to the general question of how a jurisprudence with definite welfare principles built into it can insure the protection of private and minority rights—a protection hitherto derived in large part from a rigidly individualistic conception. This dilemma is not a new one, but to shrink the sphere of freedom of private associations to injure each other or individuals may well tend to remove one of the main bulwarks of freedom against the state. Positive welfare principles are so much more elusive and expansive in contrast to "negative" rights against uncontained power. To draw the line between proselyting and religious bigotry would tax the courts.

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That shortage of labor resulting from the Black Death enhanced the status of agricultural workers is a platitude. The present treatise documents a rather different situation: the creation of a "free labor market" among innumerable unskilled laborers (in large part of a despised race) lacking capital or other guarantees of fair bargaining
and faced by landlords lacking experience in directing such labor—neither party having experience in a money economy.

Relying upon traditional land law—and drawing upon premises not legally articulated as to the "proper" status of the worker—the several southern states evolved a broad pattern of cropper or tenant relationships. While many of the variant statutes reflected local conditions, they expressed also tentative efforts to consolidate a new pattern for relating men to land. If one were to focus upon tenancy practices that did not come to adjudication, rather than as this book does upon the contests over tenancy relations, the generality of the pattern would stand out.

In the circumstances, new practices were built upon former slavery relationships, and received law was weighted toward the interests of the landowner, whose own economic situation was sufficiently precarious. Much of the subsequent modification in the law testifies to a slow acknowledgment of the hitherto neglected interests of the occupier, the cropper. The author's closing recommendations point to additional needed reforms.

Within the context so briefly sketched above, the twenty-two chapters of this treatise cover virtually every phase of landlord-tenant relations in each southeastern state, tracing the changes over the past century. The alternative procedures for entering into tenure contracts, the contents of the relationship and the complementary privileges of the parties, as well as the modes of terminating the relationship are dealt with exhaustively. As befits the local situation, special attention is devoted to crop liens and credit.

The reviewer regards the treatise as seriously deficient on only one score. Professor Mangum might fairly be accused of naivete in interpreting the motives of the dominant landowning group during the formative reconstruction period.

Clearly another treatise is called for which would correlate the laws with the economic forces within southern agriculture. By virtually any test beyond mere survival, southern land laws must be adjudged distinctively faulty so far as concerns insuring protection of natural resources, stable and profitable farming, equity to the laboring group, or a "progressive economy." But that law also testifies to the persistent efforts of generations of farmers and lawyers to create a rational order out of a chaotic system.

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