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Book Reviews

Amry Vandenbosch
University of Kentucky

W. Lewis Roberts
University of Kentucky

Byron Pumphrey

BOOK REVIEWS

THE TERMINATION OF MULTIPARTITE TREATIES. By Harold J. Tobin. New York: Columbia University Press. 1933. p. 321. $4.00.

Due to the rapid increase in the number of multipartite treaties the term international legislation is gaining in usage. The use of this term, while not unjustified, serves to draw attention to certain grave problems connected with the legislative process in the international field. One of the gravest of these problems is the revision or termination of treaties. It is with this very important problem that the book under review deals.

In this valuable treatise the writer in succeeding chapters discusses termination in war time, at the close of hostilities, by denunciation after notice, and by superseding treaty. This is followed by a chapter on the termination of parts of treaties and another on conference procedure for terminating treaties. In a final chapter Doctor Tobin hazards some conclusions. Heretofore we have had generalizations by publicists on the termination of treaties but these generalizations were not based on a wide examination of the practice of states. Doctor Tobin's careful and extensive examination into the practice of states leads him in many cases to conclusions quite different from those previously held.

The more important and controversial a treaty is the less provision there is made for its termination or revision. Revision of such treaties can often be obtained only by war. The development of a technique or procedure whereby all treaties can be terminated or revised by peaceful means is undoubtedly the most important and urgent as well as the most difficult problem in international law and relations today. Article XIX of the Covenant of the League of Nations has been demonstrated to be inadequate.

Doctor Tobin concludes his examination of the problem with the statement that "there can probably be no considerable progress in the field of treaties created and revised primarily by diplomatic negotiators rather than by technical experts until there is a greater sense of security between states than exists today." Surely this is not a very helpful conclusion!

A. VANDENBOSCH.

Professor of Political Science
University of Kentucky

TRADE ASSOCIATIONS AND INDUSTRIAL CONTROL—A CRITIQUE OF THE N. R. A. By Simon N. Whitney. New York: Central Book Company. 1934. pp. XI, 237.

The author of Trade Associations and Industrial Control states

that the purpose of his book is to investigate the long-run effects of the bill on industry, industrial policy, and industrial government. He believes that an honest criticism, whether it be of a person, a social order, or a government policy, is of real service. "The best indicator," he says, "of what is coming is to be found in the codes of fair competition which have been approved." The theory behind the codes, he thinks, is wrong as (1) the investment boom was caused not by inequality of incomes but credit expansion; (2) high wages and large spending did characterize the period of prosperity prior to 1929; (3) the remedy proposed is dangerous, since it threatens to reduce the productive equipment of the nation; (4) it is dangerous because it threatens to raise wages to a point where the number of workers who can be employed is diminished; and (5) it is also dangerous since it starves the sources of funds for the capital goods industries. He points out that the act has been beneficial in abolishing child labor and eliminating cut-throat competition; but he further points out that "the underconsumption theorists, in diminishing saving, are burning down the house to roast the pig."

He then proceeds to show that the experiences of trade associations, which have always had for their basic purpose the stabilization of prices and the prevention of price cutting, do not promise much for the success of governmental control of industries. While the results achieved by the big trust companies like the Standard Oil and International Harvester Company are better, they are none too encouraging, nor are the accomplishments of the cartels of continental Europe. The writer calls attention to the fact that our governmental regulation of public utilities has involved great expense and delay in rate and price fixing; that price fixing in the case of Chilean nitrates, of Japanese camphor, of Franco-German potash, of Brazilian coffee, and of British rubber was a failure to a very great degree. Also the planned economies of the World War, Italian Fascism and Russian Communism furnish little aid or comfort.

Of course the most interesting part of the book is the final chapter, entitled "Reflections on Industrial Control." The author is of the opinion that the experience of the Farm Board prior to 1933 shows that stabilization of prices is not desirable; that the prohibition of sales below cost is unsound in theory as it is not cost but worth to the consumer that really determines value; that the control of production is to be condemned, as it tends to keep production too low, it keeps the inefficient in business, and pays a bonus for incapacity. Furthermore, the control measures under the N. R. A. are being "put through, not as parts of a unified closely locked plan, but as a series of largely disconnected steps." To make all the necessary adjustments under the control plan would require an omniscient "central brain."

The work is interesting reading. The writer's observations seem

sound, his reasoning accurate and his conclusions worth careful consideration.

W. LEWIS ROBERTS.

Professor of Law
University of Kentucky

CASES AND MATERIALS ON THE LAW OF POSSESSORY ESTATES. By Richard R. Powell. Property Series. St. Paul: West Publishing Co. 1933. pp. XXII, 541.

The "New Deal" property series compiled by members of the law faculty of Columbia University is now completed by the publication of volume one. The earlier numbers included Landlord and Tenant by Professor Jacobs, Vendor and Purchaser by Professor Handler, and Trusts and Estates by the author of the first volume, Professor Powell. No provision is made for a casebook in personal property. The subject-matter of the usual casebook on personal property will be covered in various other courses as, for instance, some sections are considered in the course on sales. The addition of numerous specialized subjects to the law school curriculum in recent years leaves no time for an old standardized course like personal property. This may be all right for a large law school that has a very large teaching staff, but it is hard to see how it will work to advantage in a small law school with a small teaching staff. There is much material given in the standard personal property casebook which the average law student will have to know. Judges still talk in terms of personal property and there are many comparisons to be drawn between personal and real property that are an aid in teaching the latter. But the fact that personal property is not included in this property series should not necessarily be held up against this particular volume of the series.

Possessory Estates contains nearly five hundred and fifty pages of material. Two-fifths of this is composed of excerpts from text books. Bigelow and Madden's Introduction to the Law of Real Property is reprinted in this book. This seems hardly necessary, as the publishers have for years printed this excellent introduction to real property under a separate cover and made it available at a small cost. It seems safe to say that in this pamphlet form it is today read in nearly all the law schools of the country.

This leaves about three hundred pages of case material for the first year's work in property. Comparatively few of the old landmark cases which the courts refer to time and again in their opinions are included in these three hundred pages.

It seems to the reviewer that the "New Deal" as exemplified in this volume of the series has gone too far.

W. LEWIS ROBERTS.

University of Kentucky
College of Law

LYNCHING AND THE LAW. By J. H. Chadbourn. The University of North Carolina Press, Chapel Hill, N. C. 1933. pp. X, 214.

All intelligent Southerners, whether they be lawyers or laymen, will find much to ponder in this constructive book. Its implications go deeper than its subject matter, and those who are concerned with keeping the future free from the bloody stains of an inglorious past, will recognize that legal reforms constitute only a step toward the solution of this complex social problem.

This fact is indeed recognized, both by the author of the study and by the group of prominent Southerners who sponsored it, the Southern Commission on the Study of Lynching.

The aforementioned group undertook four years ago to identify and appraise the diverse factors involved in lynchings. The basis of its information is a series of painstaking case-studies of the lynchings in 1930, made by trained investigators working in the field. Common threads of economic and social factors have been found woven into the pattern of the typical 1930 lynching community. Mr. Chadbourn, on page 4, describes it as follows:

"It is a rural Southern county characterized in general by social and economic decadence. For example, it is below the state average in per capita tax valuation, bank deposits, income from farm and factory, income tax returns, and ownership of automobiles. Educational facilities are also below the average. . . . . There is generally prevalent a supposed necessity for protecting white women against sex crimes by the Negro. All these, plus emotional and recreational starvation and a fear of economic domination by enterprising Negroes, create the complex of 'keeping the nigger in his place.' Periodic lynchings are the result."

Fundamentally, then, lynching is an economic phenomenon. Confirmation of this is evidenced by the fact that the statistical indices of wealth, education, cultural achievement, health, law and order reduced to a per capita basis combine in every instance to give the Southern states the lowest rankings in the Union. It is even asserted by one commentator that if you make a chart showing fluctuations in the price of cotton and the number of lynchings, these two lines will be seen to go in opposite directions. When the price of cotton goes down, the number of lynchings rises.

Recognizing the need for basic economic betterment and education, the Commission wished to find out whether, even with the existing economic levels, the number of lynchings could be sharply reduced, whether the processes of the law in dealing with lynchings could be quickened and given life.

In answering this question in the affirmative, Mr. Chadbourn shows that the charge that prompt justice in the courts would prevent lynchings has no basis in fact. In a probable majority of cases there have been no judicial proceedings against the lynched person, in others, the lynching has occurred after the accused has been found

guilty. Further, most victims of lynchings are Negroes, and in lynching communities they are more drastically punished than are whites similarly circumstanced. Hence it is a just conclusion that one guilty of those crimes which most generally occasion a lynching has a scant chance of escaping punishment. Incidentally, alleged rape is given as the offense in only one-sixth of the cases. It would seem, then that communities in which lynchings occur must seek some other justification for these crimes than the one that such proceedings have the salutary effect of protecting white womanhood.

Insofar as the legal machinery itself is at fault, a principal reason for lynchings is the almost total lack of punishment meted out to the lynchers. Judges, prosecuting attorneys, and the jury, most of whose members share the local prejudice, must bear the major portion of the blame for this failure of justice.

Foremost among the several constructive proposals put forward by the author as likely to curb lynchings are statutes providing for a recovery against the city or county in which the lynching occurs.

This penalty, it will be observed, seldom touches the pockets of the actual lynchers for, according to the findings of the Southern Commission, most of those who participate in mob violence are irresponsible, uneducated, and propertyless.

The device is justified on the ground that people who do not lynch must be forced to pay until they busy themselves to prevent others from lynching. It thus fixes responsibility upon the educated and propertied people of the community, until they take steps to prevent crimes of this nature. But its real justification lies in the fact that in those states and counties where it has been enforced, there has resulted a sharp decline in the number of lynchings thereafter taking place. While eleven states have such provision, only one Southern state, South Carolina, has seen fit to incorporate such a penalty into its statutory law.

Another tested device which has an appreciable effect in bringing about the reduction of lynchings is the ouster of peace officers. But the effect of this measure is negatived in a number of states having similar provisions for the reason that these states, in defining lynchings, have said that the person lynched must be in the custody of a peace officer. Thus, if five hundred men capture an alleged rapist in the mountains of Kentucky or North Carolina, hang him, and riddle him with bullets, it does not constitute a lynching.

It is apparent that such provisions might cause some sheriffs to be remiss in their duties, and fail to capture a person likely to be lynched. In North Carolina, for example, only eight of the nineteen cases for which data are available involved the removal of the deceased from jail.

Additional helpful measures include (1) prosecution on information in lieu of indictment (2) prosecution by Attorney General in lieu of local prosecuting officers (3) change of venue in trial for lynching;

(4) disqualifying jurors who have expressed pro-lynching sentiment; (5) special terms of court; (6) employing military force and declaring martial law.

Among the proposals for additional legislation, the use of the injunction is given especial attention. A great deal of controversy exists as to the practibility of this measure. It may be said in its behalf, however, that the way is opened for summary punishment of lynchers without the intervention of a jury. In the hands of a courageous judge it would appear to constitute a powerful weapon.

All of these proposals, both theoretical and those which available data have shown to be effective in actual practice, are set forth by the author in a proposed model act in one of the appendixes. Another one of the appendixes is devoted to the setting forth of existing legislation in the various states.

The author deals only in a sketchy way with proposed federal legislation upon the subject. Pointing out that one of the strongest arguments against such bills are their alleged unconstitutionality, he refers the reader to other sources for a discussion of this point.

All together, however, Mr. Chadbourn's book constitutes one of the most invaluable and intelligent approaches to the subject that has been made. That it stems from Southern sources is particularly encouraging. And that the South is making steady progress toward the solution of this problem none can question.

Its activities in this connection proceed upon a broad scale. Mr. Bruce Bliven reports that in certain Southern states, when a sheriff stands out against a lynching mob, leading state officials present him a medal. When a new sheriff takes office, a committee, usually of women and including some of the leading white women in his town, waits upon him and gets him to sign a statement that he will not tolerate lynching in his county.

Such activities cannot be too highly commended in an age which has seen the governor of a great state publicly condone mob law. In such periods as that through which we are now passing, when existing tensions and irritations increase the likelihood of these reversions to savagery, the efforts now being made toward halting the toll of Judge Lynch need to be redoubled.

In the meantime, it would be well if the following words of an Alabama judge could be more effectively impressed upon the public mind:

"It matters not that the prisoner may have been guilty of the most revolting crime known to our laws. The next wave of popular frenzy might deprive of his life one who, upon proper investigation, would be found to be innocent. It is vain for us to write in our Constitution that cherished heritage of English-speaking people, that all persons accused of crime shall have the right to a 'public trial, by an impartial jury,' and shall not 'be deprived of life, liberty, or property, except by due process of law,' if our government cannot or will not

enforce it. A law not enforced is no law at all. The sheriff who defends his prisoner from violence is defending the Constitution of his state, and perchance the lives, the liberty, and the happiness of his own family."

BYRON PUMPHREY.

Lexington, Ky.