

Starting with these fascinating situations, where "the facts of the case are intelligible to the least instructed layman and the only persons utterly at sea are those connected with the law," these decisions proceed with inexorable and convincing, if slightly daft, logic to conclusions with which we are compelled to agree although we know better. The Division of Probate, Admiralty and Divorce, or of Wills, Wives and Wrecks, is obviously right in its decision that one part of its jurisdiction must terminate, because marriage is a lottery or gaming transaction, in which "the element of skill is negligible and the element of chance predominates," so that "the Court cannot according to law assist or relieve the victims of these arrangements, whether by way of restitution, separation or divorce." Youthful counsel seems to be to be quite correct in his contention that a decision of the House of Lords is so much in the nature of an act of God that the losing party should not be mulcted for costs. The Minister of Agriculture and Fisheries is clearly sound in his position that a stranded whale which is the property of the crown under the ancient doctrine of fish royal does not fall within the responsibilities of his department, since a whale is not a fish. I agree fully with the Bow Street-magistrate who held that a check written on the side of a cow was a negotiable instrument, and my entire accord and sympathy goes out to the Lady Chancellor who exercised a lady's prerogative of housecleaning and threw out the Woolsack. It is difficult to refrain from mentioning more—there are ninety cases altogether in the two volumes, and most of them are wonderful. They are indispensable for the library of anyone who likes to season his law with a little levity.

I find myself regretting that Sir Alan never was in fact elevated to the Bench. His impact upon the law of England would have been a thing worth journeying to see. There have not been many good judicial humorists, for all too obvious reasons. Minturn of New Jersey was a master of the mock heroic, and there have been others who now and then have let themselves go, usually on the recurring topic of the scrub bull and the pedigreed heifer, which has become the theme song of American legal humor. Few of them ever approached these Misleading Cases. Mr. Justice Herbert would obviously have been irrepressible. The least that one can say is that some few segments of the common law would have been a different, and a far more diverting thing.

WILLIAM L. PROSSER*

* Dean of the University of California Law School.

Civil Rights in Immigration. By Milton R. Konvitz. Ithaca, New York: Cornell University Press, 1953. Pp. xii, 216. \$3.50.

"I have assumed," writes Dr. Konvitz in his preface, "that there are many Americans, in and outside of our colleges and universities, who would like to have in a book of about sixty thousand words an objective, critical evaluation

of American immigration policy, so that they might be enabled to decide for themselves what is right and what is wrong in that policy."

The book is intended, therefore, not so much for the expert as for the broader group of "American citizens concerned with public affairs." It is now about seven years since the Cornell University Press initiated the Cornell Studies in Civil Liberty with "The Alien and the Asiatic in American Law" by the same author. Significant developments in the form of Supreme Court decisions, legislation, and presidential declarations have made desirable, Professor Konvitz asserts, a completely new book, not merely a revision of his earlier one.

It is interesting that this new book was nearly completed when the report of the President's Commission on Immigration and Naturalization was made public. The author found most of his views confirmed by that report, which is cited in footnotes at appropriate points; however, he mentions several respects in which his own thinking goes "a bit further than the Commission."

As is indicated in the title, most of the discussion pertains to immigration problems. These problems appear under two broad headings: (1) Admission and Exclusion Policies; and (2) Deportation Policy. Only about twenty-five pages are devoted to naturalization law and procedures.

After brief consideration of Supreme Court decisions establishing the plenary power of Congress to exclude aliens, and tracing racial exclusions under American immigration laws, the author comes to grips with the subject of discrimination under our quota laws. He recites the well known and openly admitted discriminatory motivation of the 1924 Act and shows how that point of view has persisted down through the most recent legislation. Extensive use is made of President Truman's veto message written on the McCarran-Walter bill. Parenthetically, it might be stated that the entire veto message, together with other valuable material on related subjects, appears in Appendices to the book.

It is during the course of discussing quotas that Professor Konvitz comes to his first proposition on the subject of civil rights. He states as a premise that an act of Congress, effective internally and based on the proposition that all Americans who are descendants of the English, Irish, or German nations are superior to those who are descended from other nations or peoples and are to receive special privileges would be clearly unconstitutional. He then suggests that "The Supreme Court has failed or refused to see that an immigration law can discriminate against American citizens by reason of their race or national origin as much as can a law obviously directed at domestic or internal policy." The reason is, obviously, that "an American citizen can easily bring into the United States his British parents [because of the large—and unused—quota], while another American citizen may not be allowed to bring over his Latvian or Polish parents [because of the pitifully small quotas for those nationalities]." Professor Konvitz hastens to point out that immigration of parents is used only as "an example of a systematic and radical order of discrimination." It is an interesting one.

There follows a consideration of the exclusion of subversives, with the substantive and procedural provisions summarized. The discussion of the case of *Ellen Knauff*¹ should give the thoughtful American considerable food for thought—in spite of the favorable outcome to Mrs. Knauff after three years detention.

Although the next subject of "The Matter of Assimilation" is somewhat out of order, it is nonetheless interesting and constructive. Senator McCarran is cited for his statement that "assimilation is the key to a sound immigration system" and Dr. Konvitz debates as well with Professor Fairchild, "the most respected defender of the national origins formula."

Reverting to discussion of exclusion of subversives, the author becomes involved with consideration of loyalty oaths but finally returns to the subject by stating that the "McCarran-Walter Act is part of this smoke screen of intimidation that has been dropped upon utterance and thought."

Eleven pages of "conclusion" come at the end of the discussion of Admission and Exclusion Policies. While slightly discursive, they contain the essential points deserving of consideration by those interested in a sound and fair immigration policy.

The chapter devoted to "Deportation Policy" is thoughtful and provocative. Witness the sentence: "It is the deportation policy especially that makes aliens in the United States homeless persons." Moreover, after discussing leading decisions of our Supreme Court on this subject, the author submits that over the years "seven Justices of the Supreme Court have dissented from the propositions that Congress has plenary power to deport aliens and that such aliens are not entitled, in the deportation process, to constitutional protection." Several of the names on this list will come as a surprise to some lawyer readers familiar with the records of the Justices in other fields!

Somewhat detailed attention is given to the case of *Harry Bridges*. The brief but rather complete chronology of the case summarizing the main steps will be of interest to many readers. The author suggests that "Harry Bridges was not alone on trial; it was our administration of justice that was also on trial;" and he conjectures regarding the probable verdict of history on this incident.

In introduction to five recommendations on this subject of deportation, Dr. Konvitz states: "The doom of deportation is one against which our courts have protested time and again, in an effort to awaken the conscience of Congress or the public, but thus far success has come exclusively to the side that represents harshness, and even cruelty, in the treatment of aliens."

For reasons already indicated, briefer mention need be made of the chapter on "Becoming a Citizen." It is a compact statement on citizenship by birth and through naturalization. Under the latter, it is pointed out that "as ineligibility [for naturalization] because of race or color was gradually, and in 1952 absolutely eliminated, ineligibility because of opinion became a more prominent

¹ *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950).

feature of our naturalization process." Then follows a résumé of court decisions on conscientious objector applicants for naturalization, and of the present provisions under the Immigration and Nationality Act of 1952, followed by an equally informative dissertation upon "Political Opinions" as they relate to naturalization.

Throughout the book are to be found, as might be expected, recommendations with respect to changes in the much discussed McCarran-Walter Act. The author endeavors to be objective and practicable, recognizing that some of the changes may not be forthcoming for some period of time while others should be more immediately acceptable.

Because book reviews take so many different forms, I have long been in doubt as to the most desirable objective. A general notion of the scope and content of the work is, I think, always desirable. This I have endeavored to give. A review which may be taken as a complete substitute for a reading of the book is a service neither to the author nor to a prospective reader. This I am confident I have not furnished. If a review is supposed to be an evaluation by one *supposed* to be competent to evaluate, then waiving the question of my competency I say that this little book is worth the reading. Perhaps that means that the author expresses my general point of view on the subject. I hope it means more than that.

We have not, up to this point, been much inclined to think or act in terms of civil rights with respect to immigration and naturalization. That this is true is reflected in court decisions, legislation, and administrative procedures. In placing the emphasis at this point, Dr. Konvitz has made an important contribution.

EARL G. HARRISON*

* Former United States Commissioner of Immigration; former Dean, University of Pennsylvania Law School; member of Supreme Court and Pennsylvania Bars.

Radio and Television Law. By Harry P. Warner. Albany, N.Y.: Matthew Bender & Co., 1948, with supplements and revision to 1953. Pp. xii, 1122, supp. 127. \$35.00.

Radio and Television Rights. By Harry P. Warner. Albany, N.Y.: Matthew Bender & Co., 1953. Pp. vii, 1254. \$35.00.

These two ponderous loose-leaf volumes, which are, in certain areas, the only published text, have attracted curiously little notice.¹ To be sure, they do not constitute a legal landmark, such as a Williston, Scott, or Wigmore might give

¹ As of this writing, Vol. 2 ("Rights") had not been reviewed by any periodical listed in the Index of Legal Periodicals; Vol. 1 ("Law") only in 35 A.B.A.J. 123 (1949), and, of all places, in the English 17 Sol. 23. Some non-legal periodicals of the radio-TV industry have given it notice.