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BOOK REVIEWS

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BOOK REVIEWS

RACIAL DISCRIMINATION AND PRIVATE EDUCATION (*sub-title:* A LEGAL ANALYSIS). By Arthur S. Miller. Chapel Hill, North Carolina: The University of North Carolina Press. 1957. Pp. xiv, 130, 2 (table of cases), and 2 (index) with annotations. $3.50.

"WE conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

The foregoing language of decision was pronounced by Mr. Chief Justice Warren in the landmark cases of *Brown* v. *Board of Education of Topeka,* and *Bolling* v. *Sharpe,* some four years ago—May 17, 1954. An addition to the "leading cases" which have issued from the highest echelon in the American judicial system; a new chapter in the national history was begun. In both instances, the historic event of singular magnitude bears the title of the *Segregation Cases.*

The stream of commentary which has followed in the public prints and scholarly journals bears significant and substantial testimonial to the tremendous impact which the Supreme Court decision has made on the social, political, and economic life of the nation. Of the various rivulets of study, critique, and hypothesis which are running their respective courses, Professor Miller has chosen, in a well-organized and lucidly written book, to follow the one of racial integration in private education.

In dealing with the general inquiry of the book—the legal significance of the *Segregation Cases* with respect to American private education—the author, by way of introduction, has devoted his opening chapter to the nature and extent of the private school system in America. He has discussed the important place which non-public education, especially the private colleges and universities, has held in the scheme of American education. Concerning the legal status of private education, there is a survey of state statutes and judicial decisions touching the area of inquiry; noting therein the paucity of federal intervention in the field. A discussion of state governmental controls over curriculum, instruction, and administration of educational institutions rounds out the prefatory phases of the general inquiry.

Approximately one-third of the book has been dedicated to a most comprehensive treatment of the problem of sanctions, both public and private, as potential and actual instrumentalities against integration in private education. In the former segment, that is public or governmental sanctions against integration, the author has surveyed four avenues of approach: state statutes which appear to require segregation in nonpublic education; the denial of state benefits to private educational institutions; the exercise of state police powers as an external manifestation of disapprobation; and finally, governmental sanctions and its relation to the due process and equal protection clauses of the federal Constitution. In the latter segment, that is, nonpublic or private sanctions against integration, the author has discussed the so-called "private school" plans, resolutions of interposition and nullification, and the impositions of deprivations. Within the scope of private non-legal sanctions, Professor Miller has described and treated those which are physical, economic, and psychological.

In his chapter on the public nature of private education, Professor Miller has given us a rather luminous development of the problem which the future holds for judicial pronouncement grounded upon the supposition of extension of the announced principle of nonsegregation in public education into the area of private education. The discussion of hypothesis, at this point, centers about the constitutional concept of "State Action" and its concomitant decisional developments.

Members of both bench and bar will find special attraction in Professor Miller's treatment of racial limitations in grants and gifts to educational institutions. He raises two problems for legal analysis: may a person excluded because of race from the benefits of a trust bring an action to have the trust opened to include him; and, may the trustee, or a grantee, refuse to carry out its terms by ignoring the racial restrictions. Using the *Girard College* case, which came down during the term last past of the United States Supreme Court, as a springboard for conjecture, the author has particularized an appreciation of the implication of limitations in grants and gifts with respect to public policy; and the operation of the doctrine of *cy pres* in consummation of the educational objectives of the trust.

For his concluding chapter, the author has endeavored to set forth his conclusions from his study of racial discrimination and private education. Inasmuch as they can be based only upon incomplete evidence and upon those trends presently discernible, they must perforce be, as the author asserts, admittedly tentative.

Be that as it may, Professor Miller has given enlightenment to, and rendered helpful assessment towards an understanding of a vital problem which stands poised on a promontory of present serious national concern. The fruits of his scholarship in the main problem areas involved in racial integration of private education bring animation and impetus to a recent judicial reflection.

"The problem of changing a people's mores, particularly those with an emotional overlay, is not to be taken lightly. It is a problem which will require the utmost patience, understanding, generosity and forebearance from all of us, of whatever race. But the magnitude of the problem may not nullify the principle. And that principle is that we are, all of us, freeborn Americans, unfettered by sanctions imposed by man because of the work of God."

FRANKLYN C. SETARO

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THE ALIEN AND THE IMMIGRATION LAW. By Edith Lowenstein. New York: Oceana Publications, 1958. Pp. xii, 388. $7.50.

THE book outlines the issues which arise from our immigration laws and which are more numerous than a cursory glance reveals. The publicity surrounding the McCarran-Walter Act[1] gave prominence to the "quota" regulations, but they are not the only source of problems nor is the Act itself the only pertinent statute; cases may still be ruled by older laws or by the Displaced Persons[2] and Refugee Relief Acts.[3] The term "immigrant" is collectively applied to prospective citizens, short term visitors, travelers in transit, diplomats, students, delegates to conventions, crew members of vessels and planes, in short: to everyone who touches the shores of this country. Problems of proper classification, and sometimes of readjustment, are the natural result. The much disputed quota system is indeed responsible for many predicaments. Major causes are the scarcity of quota numbers, and the split up of families, if different quotas apply to their members. In this area, the language of the law leaves little room for interpretation, and private legislation is often the last resort. Some of the immigrant's troubles are of a mere technical, but hardly less serious, nature; he may

[1] Ch. 477, 66 STAT. 163 (1952); 8 U. S. C. § 1101 ff. (1952 ed.).

[2] Ch. 647, 62 STAT. 109 (1948); 50 U. S. C. Appendix § 1951 ff. (1952 ed.).

[3] Ch. 336, 67 STAT. 400 (1953); 50 U. S. C. Appendix § 1971 ff. (1952 ed.) Suppl. IV.

be unable to obtain formal proof of "good character, country of origin, previous residence, literacy", and be frustrated in his immigration or naturalization efforts.

After naturalization, his status as an "alien" is not fully extinct. The threat of revocation still hovers over him. Prolonged stay abroad will definitely jeopardize his citizenship, and he is in this respect more vulnerable than a native born person would be. The legal situation offers here one of the few instances of differentiation between citizens.

The book is not written as a manual, or a critical review, of immigration law. It shows the law in actual operation. Its story, told without partisanship, is built around live cases, and amply illustrated by court and agency rulings. Originally presented as a social case study, it is of undeniable value to the legal profession. To the practitioner who is, or at some future date may be, engaged in immigration matters, it demonstrates the law's finer and cruder points. It is also the first comprehensive survey of the impact and implications of the McCarran-Walter Act, preceded only by a selective official report in 1955.[4] This Act wrote a major, but probably not the final, chapter in Alien legislation. It may turn out to be the testing ground for future developments. To all those who retain an interest in its subject matter, this factual, exhaustive and well documented study will be highly welcome.

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4 Report on the Administration of the Immigration and Nationality Act (Feb. 28, 1955). Committee Print for the use of the Committee on the Judiciary, House of Representatives.

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