

BOOK REVIEWS

VAGARIES AND VARIETIES IN CONSTITUTIONAL INTERPRETATION,
by Thomas Reed Powell, Columbia University Press, New York, 1956, Pp. 229.

Lawyers and all others who have more than a mere fond attachment to the law must, following the legendary Justice Holmes, now perhaps breathe with their morning air the stubborn perplexities and uncertainties that have proved in law to be no less uncommon as they are in women and the weather. That the life of the law has not been logic is an entrenched axiom. Yes, the law cannot be divided into black and white, nor its postulates be assigned to water-tight compartments. This book, made up of Thomas Reed Powell's Carpentier lectures in April and May of 1955 at Columbia University, elaborates on this theme, as it suggests the case of constitutional law as some kind of dramatic extreme of the same.

What appears to be a painstakingly thorough analysis of wavering decisional trends on interstate commerce and state taxing power, is utilized to bring home the author's point: that the "teeterings and see-sawings are signs of an undulating course of the law." As regards the title's pretentiousness, the author offers his apology in the latter part of the book that it means not to be a treatise and that other constitutional law subjects would "obviously support and exemplify my thesis that they would afford an instance of *res ipsa loquitar*." Though discussion has been devoted to Marshalls involved justifications of the power of judicial review, yet one may still be led to think that the material put into the book was originally intended to be an exposition on something more in the peculiar neighborhood of the commerce clause of the United States constitution. The author in passing the book under its present title may be excused by occasional interstitial remarks correlating the discussion on the commerce clause with the catch-all theme. No doubt it would have gone far to recommend the book had the author included a brief excursion into the field of the civil liberties by way merely of further elaboration on its main thought.

The objection on the basis of its pretentious title notwithstanding, Professor Powell is to be credited with assiduousness in collating the intimidating heap of case data. The sharp regard paid to the dissenting opinions is noteworthy. The sustained insight he reveals throughout his analysis of the "teeterings and see-sawings" betrays his usual competent critical attitude, for after all, he has been, as Professor Paul A. Freund discloses in the foreword "an indefatigable and articulate critic of the Supreme Court over a professional span of fifty years." And it is heartening to note how the author infuses into what otherwise would be sheer dull and tedious technical reading, fascinating wit which, of course, could only come of a person of his breadth and depth. Consider, for instance, his statement that "We should preach the gospel that there is no gospel that can save us from the pain of choosing at every step." And, of course, as far as Powell's thesis itself is concerned, no room for dispute remains. The book is convincing enough. Yet, the comment must be repeated that the book, if it is to be taken upon its title, unnecessarily indulges in a too detailed discussion of examples in just one limited field of U.S. constitutional law.

Antonio R. Bautista

THE FREEDOM READER edited by Edwin Newman, Oceana Publications, New York City, 1955. \$2.70

With the growth of totalitarian governments, not only in Asia but in various parts of the world, the necessity to redefine the frontiers of freedom becomes a moral and legal imperative. The inroads of propaganda into present-day definitions of moral and legal norms and ideals have beclouded the issue of freedom that even pseudo-liberalism has almost become the distinctive mark of the conventional champions of constitutional liberties and human rights.

So many attempts have previously been made to strike with clarity the definitive limits of freedom in modern-day governments. The perpetual wrestle between authority and freedom is still the major dilemma of our time. With the increasing progress of man in the sciences — and even in the realms of uncharted space — it becomes a matter of ordinary expectation that man should progress in the broadening of constitutional liberties for better human relations and further enjoyment of the bounties of Nature.

The volume is a compendium of opinions which have become imbedded in our system of Anglo-American jurisprudence. It surveys the area of freedom in American society, stressing at times the historical value of the constitutional liberties in the setting-up of present-day democratic states. Without forgetting the utilitarian importance of the freedoms defined in the constitutional concept even in avowedly democratic states.

The contributors to the compendium are not all jurists. For there is that warped perspectives among the members of the bench and the bar which is foreign to those who are less subjected to the technicalities and rigors of a legal education. The volume which is divided into sections starts with a quest for freedom. Judge Learned Hand in probing into what the "principles of civil liberties and human rights" are wrote:

"I answer that they lie in habits, customs — conventions if you will — that tolerate dissent, and can live without irrefragable certainties; that they are ready to overhaul existing assumptions; that recognize that we never see save through a glass darkly; and that at long last we shall succeed only so far as we continue to 'undertake the intolerable labor of thought' — the most distasteful of our activities."

The learned jurist could not have been more correct. For it is a truism, capable of historical evidence that "heretics have been hateful from the beginning of recorded time; they have been ostracized, exiled, tortured, maimed and butchered; but it has generally proved impossible to smother them; and when it has not, the society that has succeeded has always declined." Freedom, then, provides a ready and only vehicle for human progress where man is not subject to the iron hand of authority to the point of making his servile existence no better than living death.

Justice William O. Douglas in the same section maintained that "the antidote to advocacy is counter-advocacy." This much has already been forgotten in our time. Repression has been the convenient refuge of the inept and powerful. It has become the substitute for legitimate and healthy criticism, even in universities where the free use of knowledge is supposedly the fundamental axiom in a free and democratic university.

The sectional divisions of the volume is apt and well-intentioned as they have prevented hazy and destructive generalizations true to cases when nebulous and highfaluting terms as freedom and justice are the subject of inquiry. The other sections deal on freedom and national security, freedom and the national

welfare, freedom through securing civil rights — all of which are likewise divided into sub-topics. The volume is truly a document of human rights in our time.

In the realm of public affairs, such noted personages as Dwight D. Eisenhower, Norman Thomas, Harry Truman, J. Edgar Hoover, among others, have clearly expounded their views on what freedom should be in our time. Their pronouncements on this subject is made very significant by the fact that they command not only respect, but also a following among Americans as well as peoples the world over. Justice Oliver Wendell Holmes, Justices Frankfurter, Jackson, Brandeis, Earl Warren, Roberts, Murphy, Clark, Evan Hughes, Black — all renowned authorities on constitutional law, especially on civil liberties have contributed basic ideas in the volume contained not only in judicial decisions but also in public pronouncements.

Exposition and analysis of freedom is never complete without the active participation of academicians and fighters for freedoms — in action. The volume has such noted contributors as Zechariah Chafee, Jr. of Harvard, Herman Pritchett, Sidney Hook, Alan Barth of "Loyalty of Free Men" fame, Dean Erwin N. Griswold of Harvard, Robert MacIver — and of course, Thurgood Marshall. The contributions of these men into the field of thought cannot be understated.

The volume likewise contain precedent-setting judicial decisions. And aside from such judicial documents, such important instruments of freedom in America drafted by academicians and the Civil Liberties Union have been aptly included in the volume.

There may be other anthologies on freedom. The field of choice is broad and limitless. But if there was ever published a volume which thoroughly and intelligently span the disturbing question of freedom in two hundred and thirty-six pages, it could not be other than this one. Even professionals who are so deeply habituated to constitutional terminologies may find this volume refreshing, if not actually revealing.

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