BOOK REVIEWS


Such press notices as the present reviewer has seen concerning Struthers Burt's latest opus (and he has seen a number) have been uniformly—if uncritically—eulogistic and enthusiastic. It is not the present reviewer's wish to cavil at these notices, but as one who has two and a half centuries of Philadelphia ancestry and tradition behind him, he feels that his foot is on his native heath, and he finds himself possessed of an irresistible, if diabolical, impulse "to tear the cover off." If therefore this review appears to be too unfavorable, it may be taken with a grain of salt just as the lavish encomiums of the New York Times and Herald Tribune should be, and the unbiased reader might safely conclude that the truth lies somewhere between praise and damnation.

In short, then, the present reviewer feels that Mr. Burt has written a fairly good, but not an excellent, book. It is certainly better than none, and undoubtedly the Man from Mars after reading it would have a far better idea of Philadelphia than has the Man from New York who has not read it. It is indeed written in Mr. Burt's best manner; it is chatty, urbane, witty, charming; it is handled by a real master of English prose, who makes every page sparkle. And by and large its author has painted on a broad canvas an interesting portrait of the Holy Experiment. But it is the reviewer's task, or obligation, or privilege, to be brutal, and he is perforce compelled to caution anyone examining that canvas that it falls far short of perfection on three counts, for it suffers from the sins of commission, from the sins of omission, and from the sins of misplaced emphasis.

With regard to the first of these sins, a careful reading of the book shows it to be full of misstatements and errors. For example, the present reviewer has been a member of both the First City Troop and the Rabbit, and he can only say that Mr. Burt's descriptions of these two venerable organizations are so filled with the most grotesque misstatements as to make one suspicious of every other statement of fact in the entire work. These examples are selected at random and without any desire to split hairs, but the book appears to teem with inaccuracies.

An even more trenchant criticism may be directed towards the sins of omission, for Mr. Burt's broad canvas then appears as an unfinished picture, with large areas left blank. One looks in vain, for instance, for adequate
mention of the early cabinetmakers and silversmiths, those consummate craftsmen whose productions were the glory of our Colonial city. One looks in vain for adequate mention of our Federalist and Classical Revival architects, Latrobe, Strickland, Haviland, and Walter; Strickland, the greatest of the lot, rates only one mention and that as an engineer! One looks in vain for an adequate treatment of Philadelphia sports: cricket, naturalized only in Philadelphia of all American cities and a feature of our social life in the Gay Nineties; rowing, with the Schuylkill Navy and the delightful river life; baseball, with the Athletics and their occasional moments of glory and their heroic leader Connie Mack. Mr. Burt might also—with a mild plagiarism of Van Wyck Brooks—have had a chapter entitled “Philadelphia’s Indian Summer,” centered around the brilliant group of literati who graced the festive board of the Franklin Inn during the first third of this century: H. H. Furness, Weir Mitchell, Owen Wister, George Gibbs, John Bach McMaster, Eddie Newton, Tait MacKenzie, and Mr. Burt himself—to name but a few. Nor does the history of medicine in Philadelphia receive the attention it merits. True, Mr. Burt has not neglected it completely, but his references are scattered and scanty, and a casual reader would never appreciate its full place in our native culture. Yet in spite of these omissions, Mr. Burt includes a chapter on the up-state ironmasters of the early days, whose connection with Philadelphia is at best implicational.

Closely interlocked with the sins of omission are the sins of misplaced emphasis: Penn and Franklin are the two pillars on which the whole book rests, and while they are undoubtedly the two greatest Philadelphians, and while the stamp of much that they did is still strong amongst us, yet they should not be allowed to monopolize the canvas to the extent they do here. In the first place much has been written about them already; in the second place much has happened in our city since Franklin’s death. One is reminded of the distorted, burlesque New Yorker’s Map of the United States which appeared some years back, and in a more serious vein the same charge of distortion may be made against this book. For instance the nineteenth century as a whole comes in for very short shrift, and the city of our lifetime is largely ignored, so that one is conscious of a poor balance throughout the whole work.

On the other hand Mr. Burt has a really excellent chapter on early Philadelphia shipbuilding and shipping, and he gives a fine picture of Federalist Philadelphia. He also makes a number of very forceful points, which it might do the more thoughtful of our citizenry a lot of good to ponder over, such as the heavy hand of the Pennsylvania Railroad, the evils of absenteeism, the phenomenon of a closely-knit local aristocracy, the fact that most great Philadelphians have not been Philadelphians at all, and the tragedy that most bright Philadelphians move away.

The book undoubtedly fills a gap and deserves to be read, but there is still a crying need for a good, readable, well-balanced, accurate history of
Philadelphia, scholarly but not heavy, which shall present our city in its proper place and its true proportion as an entity in the American scene.

Query: Why the map of Australia on the cover?

Devon


Theodore Roosevelt once described James Bryce as "a prodigious memory with a lot of hair on it." He could have applied his remark better to George Bancroft, whom he also knew, but of whom he stood in some awe, for Bancroft had considerably more hair than Bryce, and quite as good a memory. But one did not make jokes about Mr. Bancroft. Penurious, contentious, vain, prancing, affected, abrupt, handsome Mr. Bancroft took himself and the world too seriously for that. Instead, one accepted him for what he was personally, and admired his achievement. Bancroft may have been a tactless diplomat, an inept political manager, a dogmatic thinker, and a graceless speaker, but he was a very successful man. He performed an enormous amount of work, he kept at it for a very long time, Harvard and Oxford awarded him honorary degrees, and when he died the President of the United States, the Vice-President, and most of official Washington attended his funeral. No other American has been so honored for achievements in the writing of history. Perhaps no other has so much deserved it.

Yet Bancroft is not read today. Even before his death the kind of history he wrote was outmoded. He belonged to the age of Parkman, Prescott, and Motley, to the age of transcendental history, of nationalism, democracy and progress. The intellectual revolution that created the nineteenth century produced him; when that was in turn supplanted he went with it into the eclipse of the recent past. Bancroft was one of the Americans most representative of his age. His life was almost coextensive with the nineteenth century (1800-1891). He expressed more precisely than any other historian, and in terms so simple as to seem more axiomatic, the leading concepts of contemporary philosophy. But he never rose above that philosophy to reach the plane of universals. He was not a Maitland, nor even an Acton; for he reached his judgments intuitively rather than from his extensive learning. He was chained by his age, not emancipated by it; and perhaps that is why he can offer little help or inspiration to the present. He now belongs entirely to the history of which he wrote.

That one should rise so high in estimable opinion and then sink so low needs some explanation. Part of Bancroft’s shortcomings were those of his own genius. He was not a skilfull writer; indeed, there are those who would have us believe he was less than acceptable in style. I think it was Mr. Becker who put some of his prose into a rambling blank verse, exposing thereby its pitiably bad characteristics. Though he was as genuinely com-
mitted to the rise of the common people as any one could be who disliked associating with people who were common, he never successfully elevated his Jacksonian convictions to the highest plane of narrative, inspirational, or exhortatory literature. His strength—and it was very considerable—lay in his seemingly boundless capacity for work. He had access to a larger number of the original documents of colonial and Revolutionary history than had ever been gathered together before. He wove them into his narrative, attaining what was for his day an extraordinary authenticity. But though Bancroft loved his materials, he did not respect them. He lifted, rewrote, interlineated, combined, tortured, wrangled, and twisted evidence as he wished. Sometimes he gave his creative impulses free rein. His present biographer acknowledges this informal attitude toward evidence, but he remarks with some justice that it was not so serious a matter in Bancroft’s time as it would be now. Historiography has developed a set of standards which did not exist then. This is quite true, but the habit still reveals the man. It is illuminating to realize that the manuscripts on which Bancroft spent a fortune were more important to him for what he could do with them, than for what they contained themselves. His History was nothing quite so clearly as it was a revelation of himself.

Bancroft had many of the attributes of a scientist, but he lacked the essential concept of the scientific method. When as the venerable dean of the profession he addressed the American Historical Association in 1886, he described history as scientific; but, as Mr. Nye points out, “the difficulty was that the speaker and his audience attached totally different meanings to the word science as applied to history. To the historians of the younger generation it meant an objective search for facts upon which a generalization might be founded. To Bancroft it meant an analysis of the past in an attempt to discover in it great moral truths, the proofs of what one already intuitively believed. It had meant that to him for half a century, and he was too old to alter his definition” (p. 297).

Mr. Nye has given us a careful account of Bancroft’s intellectual development, projected against the many occupations of his public life. If you place this book on a shelf beside Howe’s Life and Letters, you will have everything you will ever need to know about the man and his work. Neither from what Mr. Nye has written, nor from Bancroft’s letters, will a satisfying picture of the person emerge, for he was one of those people who protect themselves behind attitudes and poses. Perhaps the only characteristic that lifted him above others was his great energy. But the things that shape a man for posterity are the things he does, and these he cannot conceal. Bancroft did a great many things.

Born the son of a brilliant leader of religious radicalism in New England, Bancroft was started on his way to the ministry in his ’teens. Mr. Nye’s accounts of the father, Aaron Bancroft, and of Harvard in the great days of Kirkland are excellent. The influence of German scholarship in America was becoming significant in 1818, so on a stipend from the College Bancroft
spent three years studying in Göttingen, Berlin, and Paris. He returned when he was twenty-two to become tutor in Greek at Harvard, where his stern intensity and continental affectations won him the dislike of the students, while his demonstrable success as a teacher (his students learned "two years" of Greek in one year) earned the distrust of his colleagues. With Joseph Cogswell he founded the Round Hill School for boys in 1823, where he spent seven years in "the most striking educational experiment of the decade, a pioneer attempt to combine the systems of Fellenberg, Pestalozzi, and the Prussian gymnasium into an institution suited to the intellectual life of America. Not until Bronson Alcott's Temple School in Boston in 1828 . . . did anyone establish as original and distinguished a school as Round Hill" (p. 83).

While a schoolmaster Bancroft wrote scholarly articles on German literature, which attracted favorable attention, and engaged astutely in state politics. These interests, particularly following his marriage to the heiress Sarah Dwight of Springfield, made him dissatisfied with teaching. "... a spirit within me repines," he wrote, "that my early manhood should be employed restraining the petulance and assisting the weakness of children, when I am conscious of sufficient courage to sustain collisions with men." Accordingly (aet. 31) he left Round Hill to begin his long career as politician and historian. For the next forty-three years he was to be a substantial figure in national politics, holding successively the offices of Collector of the Port of Boston, Secretary of the Navy (1845-46) and briefly of War (1846), Minister to England (1846-49), and Minister to Prussia (1867-74). His was the task of building the Jacksonian party in Massachusetts, and of administering through patronage and a controlled press the complicated affairs of a new political machine. When he moved into the cabinet, a larger sphere opened. Inseparably connected with George Bancroft is the Naval Academy at Annapolis, which he established; our military operations against Mexico were in part his to direct; and the Oregon controversy was on his desk constantly. In London he was only moderately successful, his labors being interrupted by his recall after the Whig victory in 1848. In Berlin during the Franco-Prussian War, his vigorous pro-German sympathies led him into indiscretions that became an annoyance to the government, though Gideon Welles was too harsh, Mr. Nye thinks, in his allusion to "the impertinence of a pedagogue." More significant than diplomatic activity was Bancroft's popularity in the world of scholarship wherever he went, and his unparalleled opportunities of which he made the very most to collect historical materials.

It is in connecting Bancroft's intellectual history with his political life that Mr. Nye does his greatest service. His sense of biography is very clear; he views Bancroft's life as a whole, its parts as interrelated. Each volume of the History is analyzed in thoughtful terms; the continual interplay of past and present in the historian's life is richly and effectively demonstrated. The thirty-three books and essays Bancroft produced besides the
History are placed in their generic relation to his public work, and to the shifting winds of intellectual doctrine. Professor Sloane's fine tribute seems justified by Mr. Nye's work: Bancroft "was of that greatest human type: a man of the present, valuing justly the past and no dreamer."

The political and literary careers of Bancroft were both dominated by his sturdy democratic convictions; both were supported by a militant Protestantism in religion; both were qualified by his absorption of German civilization and scholarship; both were distinguished by an elevated concept of the individual's duty to the state. I think nothing so perfectly sums up his attitude toward his own life and work as does a fragment from some notes he made for a speech at a Jacksonian rally in 1834. "The people is the sovereign," he wrote, cryptically. "The man of letters is his counsellor." It is a nice thought, that. While we readers and writers of history make our plans for post-war recovery of the human values that slip into the background in wartime, we might well recall the duty our greatest historical optimist set for the man of letters in a free society: to be Privy Councillor to the Sovereign.

Mr. Nye's annotation is by chapters, and is relegated to the back of the book. So many reviewers have objected to clumsy placement like this lately, all in vain, that it seems useless to add another protest. Publishers insist on believing readers allergic to having footnotes placed where they can conveniently be used. Mr. Nye's comments are usually worth seeking out.

University of Delaware

J. H. Powell

The First Lincoln Campaign. By Reinhard H. Luthin. (Cambridge: Harvard University Press, 1944. ix, 328 p. $3.50.)

The Republican party began its life as a group of factions which it proved difficult to organize into a coherent unit. It was a combination of high-minded, idealists, haters of the South, interests eager for subsidy, and politicos on the make. It contained an unusual number of super-ambitious men who had been suffering from frustrations of various sorts and who saw in a new deal an opportunity for the fulfillment of their hopes. The leaders in the new move came from widely separated political backgrounds; some had been Jacksonians, some had been Whigs and in the old days had fought each other. It was hard to forget these antagonisms. Also there was a plainly marked sectional division between eastern and western groups.

The party had been organized in 1856 on a so-called national basis, although it naturally had only a negligible southern membership. The leaders then had realized the need of novelty, romance and availability in a candidate and had cast aside thoughts of an experienced leader. They had taken a gambler's chance on the picturesque figure they could make out of Frémont. They had nearly won. As 1860 approached with the obvious
demoralization of the Democratic party each day more evident, Republican hopes were high. Of course the candidates were legion.

Senator Seward of New York had the best organization, the most money, and the greatest prestige, therefore he had the inside track. The contest for the nomination turned into an effort of his opponents to concentrate on someone who could beat him. The principal rivals of Seward were Governor Salmon P. Chase of Ohio, Edward Bates of Missouri, Abraham Lincoln of Illinois, and Simon Cameron of Pennsylvania, with a series of lesser favorite sons. The Chicago Convention turned out to be the operating center of a series of negotiators. Seward’s enemies were sufficiently astute to conclude a series of arrangements whereby Lincoln was given the party standard adorned with a few inconspicuous streamers in the way of understandings as to the makeup of his cabinet. His attention was not called to these arrangements until after the standard was in his grasp.

Lincoln proved to be what his backers planned, namely “a triumph of availability.” He remained at home and let the split in the Democratic party elect him with the aid of the surging bands of “Wide-awakes” and a growing popular trust in “Honest Abe, the Railsplitter.”

Dr. Luthin has told this fascinating story in full. He has ransacked the historical repositories of the nation and has marshalled his discoveries in clear and readable fashion. The reader has a striking revelation of the intricacies of party organization and thereby realizes more clearly what complex maneuvers, nominations are.

Pennsylvania readers will be particularly interested in the part played by Simon Cameron and the tariff. Pennsylvania was the keystone of the campaign and the fight first for the control of its convention delegation between Cameron and Curtin and then for its electoral vote make two of the most interesting chapters of the book.

University of Pennsylvania


This social history of the Philadelphia Baptists is an outgrowth of Professor Richard H. Shryock’s seminar at the University of Pennsylvania. The author, a member of the Church History Department of The Eastern Baptist Theological Seminary, has succeeded in writing a “local” history which is truly “history,” and no mere collection of congregational annals. His purpose, furthermore, is strictly social. It is “not to trace ecclesiastical or theological history as such, but rather to survey the social interests of Baptists within the organization of the Philadelphia Baptist Association from 1707 through 1940” (p. 7). The two main parts of the book, each introduced by an excellent brief chapter on “Historical Backgrounds,” are
separated by the year 1865. Some of the topics appear in both periods, some only in one.

In the struggle for religious liberty Philadelphia Baptists championed the complete separation of church and state, aiding by active correspondence and by moral support their coreligionists who were battling church establishments in New England and Virginia. On the problem of slavery, the Philadelphia Baptist Association was silent until 1789, when it went on record in favor of abolition. Excitement over the admission of Missouri in 1820 caused Philadelphia Baptists to assume the role of peacemakers amid the growing sectional bitterness. But when the Civil War broke out, they enthusiastically endorsed the Federal Government. In the field of education, Philadelphia Baptists aided in the founding and early maintenance of Rhode Island College, later Brown University. On the elementary level, they favored public in preference to denominational schools. The University of Lewisburg, later Bucknell University, and Crozer Theological Seminary enlisted their support. Baptists’ temperance activity was hampered by their longstanding reluctance to entangle affairs of church and state, but both formally and informally they cast much weight into the temperance scales.

The anti-Catholicism of the Baptists was not, the author assures us, a violation of the basic Baptist doctrine of religious liberty. Baptists, he says, were entirely ready to grant religious liberty to Roman Catholics, but jealously sought to curb what they considered to be the Catholic threat to American separation of church and state. A general chapter on “Moral Issues” deals with sex problems, gambling, amusements, and Sabbath observance. The author notes that, though the Baptists are in the “Puritan” tradition, some of them have recently been inclining toward more liberal attitudes on these matters. The chapter on “Work with Minority Groups”—American Indians, Negroes, and immigrants—fails to give the reader an adequate impression of the outstandingly successful work that Baptists as a whole have done for the Negro. The author observes that the Philadelphia Baptist Association has been more interested in foreign and home mission work outside of Philadelphia than in work among immigrants in Philadelphia, a shortcomings, be it added, which certainly is not confined to Baptists. The story of Philadelphia Baptists and political reform is briefly but vividly told. The same cycles of enthusiasm and apathy are to be found simultaneously in other denominations. To what extent, one wonders, were the churches leading public opinion, to what extent merely following it?

Perhaps the least satisfactory part of the volume is its treatment of social problems growing directly out of the increasing industrialization of America after the Civil War. Only a part of a chapter—that on “Social Reform”—is devoted to the relation of Baptists to labor questions. The term “Social Gospel” is not listed in the volume’s index, nor has the reviewer been able to discover more than one slight reference to the term (p. 117). Such works as James Dombrowski’s The Early Days of Christian...
Socialism in America and Charles H. Hopkins’ The Rise of the Social Gospel in American Protestantism 1865–1915 are not mentioned, nor is the extremely important and relevant work of A. I. Abell, The Urban Impact on American Protestantism 1865–1900. Presumably two important works by A. F. Tyler and by Krout and Fox, dealing with the period before the Civil War, were published too late for inclusion.

The chapter on “War and Peace” faithfully traces the inconsistent fluctuation of sentiment between these opposite poles, a fluctuation which was not confined by any means to Baptists or to churchmen in general, but simply reflected the immaturity of America’s international purposes prior to World War II.

Dr. Torbet has produced an admirable monograph. His principal source materials are the Minutes of the Philadelphia Baptist Association, the Minutes of the Philadelphia Baptist Ministers’ Conference, and Baptist denominational periodicals. One might perhaps have desired to see more extensive use made of secular newspapers, though these have not been ignored. Ample denominational, national, and city backgrounds, based on secondary works, are provided for the various topics. The volume is well documented and contains two small but adequate maps indicating the geographical extent of the Philadelphia Association between 1707 and 1807, and between 1865 and 1940. While written as a local history, this is probably the best social history available for the Baptist denomination as a whole. There is nothing comparable to it in the social field for the reviewer’s own denomination, the Presbyterian. Students of the history of American Christianity may well hope that other studies of similar caliber will be forthcoming from Professor Shryock’s social history seminar.

Princeton Theological Seminary

LEFFERTS A. LOETSCHER


This is the welcome, and certainly long-awaited official history of one of the native Pennsylvania churches, written by the Professor of Church History in the Evangelical Seminary at Reading. It supplements a mass of confused literature on the subject, especially W. W. Orwig’s Geschichte der Evangelischen Gemeinschaft (Cleveland, 1854, 1857, and in English translation in 1858), Yeakel’s History of the Evangelical Association (Cleveland, 1894), Breyfogel’s Landmarks of the Evangelical Association, and several other works. Dr. Albright’s book is the first critical work on this important, and, from the point of view of American church history generally, neglected field; and it is safe to say that this book will remain standard for a generation.

The Evangelical church (Evangelische Gemeinschaft) is a product of the impact of the frontier upon the established communions of Europe as they
were transplanted to American shores. It is in reality a separatist movement pure and simple. The founder was Jacob Albright, who was born at Fox Mountain, near Pottstown, of Lutheran parents, who united while still young with the Berghstrasse Lutheran Church of Lancaster, but who, according to the church record, "left the Lutheran Church and became fanatic . . . afterward he became the organizer of the German Methodists in various parts of Pennsylvania . . . formerly known by the name of ‘the Albrights,’ the ‘Albright people,’ but later known by the name Evangelical Association.” Because he found no adequate expression for his own personal religious experience within the Lutheran communion, Albright’s sensitive conscience had been stirred by the sectarian evangelical impulses then prevalent in rural Pennsylvania. He was on this account led to seek satisfactory fellowship beyond the pale of institutional religion as it was then known. Moved by a genuine and doubtlessly sincere “experience” he felt called by God to lead his German brethren to a knowledge of the truth, awakening the dead and slumbering religious professors out of their sleep of sin, and bringing them again into the true life of godliness.

This was a typically pietistic call, and, like George Fox and the early Quakers, like Wesley and the Methodists, Albright began to travel extensively through the back country of Pennsylvania and Virginia. There, beginning in the year 1796, he found “great opportunities” for his Gospel to be heard. By his fervent preaching he brought many into his fold, but the exposure to inclement weather and the burdens of over-work brought an untimely death in 1808. In the last entry of his Journal—for like the early Quaker itinerants he left a record of his work—Albright wrote this moving passage: “. . . Now I thank God . . . that He has left me steadfast in the faith and pure in life, through trials, persecutions, and sufferings . . . The seals of my ministry are the converted brethren and sisters whom I have begotten through the Gospel . . .” And the real seal of Albright’s ministry is the Evangelical church which he founded.

The Evangelical church, however, stemmed also from another aspect of Pennsylvania pietism—the discontent with institutional religion on the part of the Pietistic clergy of Eastern Pennsylvania. Representative of this type was the Reverend Philip Otterbein, a missionary of the Reformed Synod of Holland who was deeply influenced by Pietism and who felt himself awakened in 1754 while he was the pastor at Lancaster. Another one of these “awakened” ministers was the Reverend Martin Boehm, a Lancaster Mennonite. The work of these and similar men among the unchurched in Pennsylvania was fruitful, but in the beginning it was amorphic and strongly tinged by English Methodism. From this chaotic state Albright, in 1800, sought escape by organization, and the Evangelical church began as the United Evangelical Association in Berks and Northampton counties. In the Conference of 1803 Albright was ordained without benefit of apostolic succession—an unfortunate move—for the established ministry soon found fault with the adequacy of his ordination. With this Conference of 1803 the
work of the Association began to expand and his preaching circuit, for example, included the West Branch Valley of the Susquehanna and even parts of Snyder and Union counties. The physical manifestations of the "Conversions" were similar to those which accompanied the revivals of Wesley, Whitefield, and Jonathan Edwards, though these English-speaking revivalists were not given such juicy names as their German fellows, who were called Knierutscher (Knee-sliders), Kopfhänger (head-hangers), Schwärmer (fanatics), Krächzer (groaners), and Heuchler (hypocrites).

Beginning in 1807 the "Albright people" began to assume the more formal character of a church. A Discipline was drawn up and Articles of Faith were compiled. A Catechism also was prepared. Thus the cycle of "Enthusiasm" was completed; an awakened individual finds brethren who define their religious affinities in a common creed. With this formalization the Evangelical Association became a church and was no longer a "sect."

The general spread of the Pennsylvania-German families to the west carried the Evangelical Association westward. The publishing house was set at New Berlin, Pennsylvania, in 1815. Here books were published, especially Das Geistliche Saitenspiel, the first authorized hymnal of the church. Continued revivals and the usual "evangelical" camp meetings helped to maintain the enthusiasm of the people.

Dr. Albright holds that 1830-1850 was the formative period of the church during which it followed the frontier, thus maintaining the pattern of American church growth generally. It participated in the usual movements: Sunday Schools, charity schools, publishing houses, educational institutions.

Dr. Albright’s book is factual, documented, and wholly free from the partisan bias which has characterized much confessional historical writing. Written in a prosy, unimaginative style, it tells the story of the Evangelical church. Its limitations are those of the historical point of view which it adopts, for the writer could have made this book an imaginative yet fully factual story had he used the methods of Dogmengeschichte. He still believes that church history means the history of churches—Kirchengeschichte. Yet this book will remain definitive for a generation, giving the facts of an interesting chapter in American religious life.

Blue Bell, Pennsylvania

JOHN JOSEPH STOUDT

Lawyers and the Constitution. How Laissez Faire Came to the Supreme Court.

By Benjamin R. Twiss. Foreword by Edward S. Corwin. (Princeton: Princeton University Press, 1942. xii, 264 p. $3.00.)

Benjamin R. Twiss had completed the manuscript of this book before his tragic death at the age of twenty-eight. It was a labor of love for Professor Corwin, under whose direction the study had been commenced, to see it through the press and contribute an introductory note. The job has cer-
tainly been worth doing. The material is interesting, the point of view is novel, the results are of considerable help to our understanding of our history.

The problem posed is, how much of the law of the Constitution is really formulated not by the judge on the bench but by attorneys at the bar? Beginning with the Civil War years, when the Constitution had not yet come to include extraneous doctrines of theoretical economics, Dr. Twiss traced the process by which lawyers successfully introduced into jurisprudence the arguments of Smith, Ricardo, Mill and others regarding the free economic man. He studied lawyers as social engineers. The heroes of his drama were the great innovators, the leaders of the bar whose services were hired by the business interests of the country, and who subtly, over sixty years, erected a code of limitations on governmental power that were originally not constitutional limitations at all, but ideological ones cast in constitutional vocabulary.

A few of the greatest advocates led the way. Portraits are sketched of Evarts, Campbell, Carpenter, and Jewett, of the elegant Choate, the elephantine, abrupt Johnson, the angry James M. Beck, the profound James Coolidge Carter. They won skirmishes at first, then battles, finally by the time of *Lochner v. New York* (1905) whole campaigns. Through Dr. Twiss' extensive learning one sees laissez faire emerge from the economist's cloistered study into the market place of ideas, becoming the businessman's defense, the constitutional lawyer's credo. What the "Brandeis brief" was for our age, introducing economic reality into the law, some of these lawyers' briefs were for an earlier day, introducing into law not reality but theory, not fact but faith.

Constitutional law is often, indeed usually, political or social philosophy, not legal stuff. An age which looked upon courts as institutions more than human, as "tutelary guardians of constitutional morality," was particularly susceptible to the persuasion of a directing, controlling philosophy which would give law the appearance of moral purpose, even when the results were of questionable moral worth. Thomas M. Cooley, whose epoch-making *Constitutional Limitations* appeared in 1868, first gave concise form and system to the philosophy of individualism. Sutherland studied at Cooley's Michigan, by the way, and all lawyers of the seventies, eighties, and nineties read his great work. "He was the most widely known jurist since Kent and Dwight." His volumes were the attorney's breviary, the corporation's rosary.

Cooley's work appeared the same year that the Fourteenth Amendment was passed. The lawyers seized upon the due process clause and the word liberty in that Amendment to establish firmer and more extensive limitations on state power than could be derived from a "mere assertion of higher law." John Archibald Campbell arguing in the *Slaughterhouse Case* linked liberty with property and the right to work, forging one of the basic tools
by which laissez faire was to be welded onto the Fourteenth Amendment. Bradley and Field accepted his arguments in their dissents. In the Granger Cases in the seventies and eighties the lawyers for railroads, utilities, and corporations generally (men like C. B. Lawrence, O. H. Browning, J. W. Cary, W. C. Goudy and John N. Jewett) executed a strategic retreat from one position to another. Defeated in their arguments on the obligation of contracts and just compensation clauses, and on their contention that unrestricted management was an aspect of property rights, they resorted to oblique attack by demanding judicial review of legislation and administration. The result, an ambiguous guarantee of a “fair return on the investment,” left an enormous residuum of power in the hands of lawyers and judges.

William M. Evarts, “Prince of the American Bar,” persuaded a unanimous New York Court of Appeals to accept his laissez-faire arguments in the Tenement House Cigar Case in 1884, in which judicial review was greatly expanded as a check on legislation. Joseph H. Choate developed this device of “judicial cognizance” until the police power became “merely power of police.” Tiedeman’s Limitations on the Police Power (1886) elevated legal devices to the dignity of a systematic code. Evolutionary concepts in social theory accompanied the articulate expression of laissez faire as a protective cloak shielding business from government. Finally a satisfactory constitutional vehicle for economic individualism was found in the doctrine of liberty of contract.

Law schools make tough law, and bar associations make tough, standardized professional doctrine. Both became national institutions in these years when the lawyers were an “inner republic,” the sons of Levi ministering to the American Constitution, the Ark of their Covenant. Through bar associations a corpus of opinion was built up; in expressing it the lawyers insulated the bench from the conflicts of ideas and interests among the people.

The final step was to impress laissez-faire doctrines on the fabric of congressional power, limiting it as state power had been limited. Dual federalism left a great area in which interstate businesses could operate without legal restrictions, for state power had been defeated and national power was soon to be. The commerce power was riddled in a series of cases in which the E. C. Knight Co. Case was the climax, and the taxing power was victimized by the application of the same boluses to a different patient. The New Deal solicitors, the American Liberty League, the lawyer’s committees of the nineteen thirties are the actors in the last scenes of this drama.

Today the play is over, and a new bill is on the boards. Constitutionally laissez faire is as extinct, if not as remote, as the dodo. But this study reveals how wrong they are who say the greatness of this country was built on a substructure of economic independence from governmental regulation. The duration of the age of corporate freedom was after all very short. It
began late—somewhere after 1875—it came to an end when people in general realized that regulation of individual enterprise for established social ends was, quite apart from being necessary, wholly desirable. Most of all, this record of the lawyers' achievement proves that freedom of enterprise from social control was not the original condition of the country, or the thing most people wanted. For many years the bench resisted it. Rather, the brief age of emancipation of profit from morality was the conscious creation of astute minds engaging in public conflict, using weapons worthy of their opponents. It was intellectual freedom, not economic, that produced the greatness of the nation—an intellectual freedom in which intellectual conflict could take place, and in which ideas, even those restrictive of the very toleration that gave them scope, could move from theory into practice.

Dr. Twiss did not conceal his personal point of view as he wrote of the battles of the law. Admiring the ingenuity, the learning, the vigor of the advocate, he did not hesitate to disapprove of the moral postulates the age assumed. He was in every sense of the twentieth, not of the nineteenth century. His integrity as a scholar is displayed by balanced judgment, by full and accurate citation, and by the breadth of his concept of intellectual history. One wishes he could have lived to continue in other studies both before and after the laissez-faire episode in constitutional history his analysis of the relations of bench and bar. But he has blazed a trail which others can follow.

University of Delaware

J. H. Powell

Calendar of Kent County, Delaware, Probate Records, 1680 to 1800. Compiled by Leon deValinger, Jr., State Archivist. (Dover, Delaware: The Public Archives Commission, 1944. 558, 133 p. $6.00.)

Every now and then a book appears which is a positive boon to researchers in the historical and genealogical fields because it is comprehensive and authoritative within its given scope. Such a volume is the recently published Calendar of Kent County, Delaware, Probate Records, 1680 to 1800. Excellently indexed, with variations in the spelling of proper names correctly listed, compiled and checked with meticulous care, the Calendar is a comforting book for librarians to have at hand. The Delaware State Archives Commission are to be congratulated upon this publication.

In a brief interesting foreword, Mr. deValinger explains why the Calendar of wills began in 1680, approximately with William Penn, and not in the years when Delaware was ruled by the Swedes, the Dutch, and the English under the Duke of York. He explains the painstaking care with which the original wills and the recorded copies were compared to insure accuracy; touches upon the vagaries in spelling proper names; and the difficulties presented in fixing dates, because of the changes from the Augustine to the Gregorian Calendar. Other difficulties are noted as follows:
Even more confusing to research workers than the calendar changes are the relationships contained in some of these early probate records. Frequently stepfather or stepmother is intended when the record states father in law and mother in law. In other cases the step parents will be designated as father and niece. The compiler has not attempted to interpret such inconsistencies but has presented them as they appear in the document.

There are some wills in which the foreign residence of the testator causes the reader to wonder why such a probate record was included with those of Kent County. These foreign wills were recorded in this country either to show what disposition was made of the nonresident's property within the county, or because he may have made a deathbed will when visiting here. A notable example of a foreign will is that of John Penn, the American, who as everybody knows, did not die in Kent County, Delaware. Nevertheless, his will was probated here August 13, 1747, after being probated in England nearly a year earlier, because of his property in this country.

In 1911 *A Calendar of Delaware Wills, New Castle County, 1682 to 1800*, was compiled and published by the Colonial Dames of Delaware. At the present time work is in progress on the Probate Records of Sussex County, Delaware, for the same period. Wills are being checked and indexed at the State Archives Commission, and the publication of the records for the third Delaware county may be expected in the not too faraway future.

*Historical Society of Delaware*


The Wisconsin Historical Society has been accumulating historical manuscripts since the very earliest days of Wisconsin's statehood. Its first executive, Lyman C. Draper, was a noted pioneer collector of manuscripts in a broad area of pioneer country. The Society's position as legal custodian of non-current state archives and its close affiliation with scholars at the University of Wisconsin have contributed to the enrichment of its collections. In 1906 a Descriptive List of its manuscript holdings, then almost 75,000 items, was published. The new Guide presents a general view of most of the collections acquired since that date.

The Guide follows the general pattern for publications of this sort outlined in the Historical Records Survey manual, *Preparation of Inventories of Manuscripts*. Each of 802 descriptive entries sets forth the title, date span, size, and general contents of a group of related manuscripts. The entries mention restrictions on the use of certain collections and include occasional bibliographical references in connection with items that have been published, but they give no information on the provenance of the manuscripts. For the latter the student will have to refer to accessions notices in the Society's periodical publications.
The manuscripts mentioned in the listing relate primarily to the area now included within the boundaries of Wisconsin. There is the usual assortment of business records, travel and war journals, family correspondence, and legal documents, unquestionably fertile ground for the social historian. The family names associated with these records reflect the heterogeneous character of Wisconsin's population, which, at the turn of the century, had a high proportion of natives of Germany and the Scandinavian countries. In the correspondence of the journalist Fritz Anneke and his wife, for example, there is abundant material illustrating the intellectual life of nineteenth-century German-Americans, and in other collections the story of emigration from northern European countries and settlement in Wisconsin is told and retold.

As the official depository for state archives, the Wisconsin Historical Society has acquired correspondence and miscellaneous documents of the governor's office and other state departments, most of them for the period before 1900. In addition to these, the Guide lists collections of personal papers of eight of the state's first twenty governors, a high ratio by current standards. This corpus of state records has been supplemented by copies of materials relating to the Wisconsin region before 1850, gathered from Federal and foreign archives, and by materials accumulated in connection with specific research projects.

Wisconsin's traditional social and political progressivism are amply illustrated in a further class of manuscripts. Since 1844, when followers of Fourier organized their "Wisconsin Phalanx" at Ceresco (now Ripon) and particularly after 1848, when refugees from the European turmoil came to establish their families and their ideas in that receptive region, Wisconsin has contributed a large portion of the leaven of liberalism in American thought. So it is not surprising to find among the collections listed in the Guide many which deal with reform movements, with woman's suffrage, Populism, labor and farmers' organizations, and cooperative ventures. Perhaps the best-known of these collections is the mass of papers brought together by John R. Commons and his associates at the University of Wisconsin in the preparation of their classic History of Labour in the United States. The subject matter of this collection spreads far beyond the state of Wisconsin, and its fame has brought many manuscripts of related interest to the Society, notably the correspondence of men like Henry D. Lloyd and Daniel DeLeon, and the archives of the Socialist Labor Party. Included among the records of this type are many items of Pennsylvania material, such as the correspondence of two Philadelphia exponents of economic cooperation, John Samuel and Thomas Phillips, and files of early Philadelphia labor organizations.

Philadelphia

BERNARD S. LEVIN