

Rent Control, Federal, State and Municipal (Book Review)

Ira A. Schiller

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RENT CONTROL, FEDERAL, STATE AND MUNICIPAL. By Bernard Friedlander and Anthony Curreri. New York: Central Book Company, 1948. Pp. xxii, 944, index. \$15.00.

Because the subject of rent control, in its overall aspect, must perforce overwhelm the authors of any single volume attempting to cover both its residential and commercial phases, criticism of this work must not be construed as failure to appreciate the value of this ambitious project.

To the legal profession, the law of residential rent control at the National, State, and Municipal levels is a "dark continent." The field is enormous and the overlapping of authority and jurisdiction creates many lanes to a "no man's land" wherein not only the Bar, but the Bench as well, stumbles along in an effort to orient itself. To the extent that this book has compiled the applicable statutes and regulations and many interpretations of both, as well as a generous number of forms, it has a source material value to the lawyer which should not be minimized. The book is living evidence of the authors' industry and knowledge of the subject. The format could not be better; the treatment of the separate subjects within the field is good and there is a continuity and coherence of exposition which testify to the authors' meticulous editing.

However, at the moment of writing this review, it appears likely that the early enactment by the Congress of the pending Housing and Rent Act of 1949 will substantially reduce the value of the book to the legal profession. Its value will then consist mainly as a historical compilation of statutes, regulations and interpretations, only few of which will continue in effect. Many of the new provisions expected to be included in the forthcoming Act are not, and of course could not be, included in the present work. Unfortunately these new provisions and some of those to be eliminated, far outweigh in importance that which remains, all of which will render the book less valuable as a current text. If events, such as the passage of drastically different legislation, reduce the value of their enterprise, the fault lies not with the authors but with the necessity for constant changes in regulatory control required by the abrupt changes in the economic and social problems in this field. While the book does justify its *raison d'être*, it does not attain the dignity and value of John W. Willis' more limited, but distinguished analysis of the Housing and Rent Act of 1947.¹

Perhaps the most general misunderstanding, among lawyers and laity, of the various rent control laws is caused by the failure to apprehend the difference between the philosophy of rent control as it was established and administered in New York for some nine years during the 1920's and that upon which was based the current federal effort. Shortly after World War I the State of New York undertook a program of rent control based upon the theory of a fair or reasonable rent for residential accommodations. In contrast to this fundamental idea, the rent control program established by the Congress in the Emergency Price Control Act of 1942 had as its basis a "freeze date" theory of rent control. In the New York program, no administrative ma-

¹ Willis, *The Federal Housing and Rent Act of 1947*, 47 Col. L. Rev. 1118 (1947).

chinery was set up. What was, in any given case, a fair and reasonable rent, was to be determined by the local courts. Upon these problems many different considerations made their impact. Matters which were deemed relevant by the court to a determination of a fair rent, such as financial return to the landlord, the hardship upon the tenant or his inability to pay the rent demanded, and many other issues served to create confusion and prevented a smooth enforcement of the legislation. In each tenant-landlord relationship there lay dormant a germ of potential legislation; each controversy between landlord and tenant meant litigation, burdensome to the courts, as well as to the litigants. There was no predetermined fair and reasonable rent, and disagreement as to what was such a rent inevitably meant recourse to the courts.

The federal concept was hinged upon the selection of a date,—in New York City it was March 1, 1943,—on which the Administrator held that the impact of the war effort had not yet affected the normal bargaining relation between landlords and tenants. Rents were then frozen as of that date, allowing "the chips to fall where they may." Because of the application of this rigid rule, resulting perforce, in the creation of some unavoidable but curable inequities and hardships, the Rent Regulations issued by the Federal Administrator pursuant to the Act, provided relief against such inequities and hardships.

This fundamental difference in concept is important to all concerned with the administration and effect of rent control, for without an understanding thereof, the lawyer charts his course without a map and the landlord and tenant blindly rail against the economic effect upon them. All too often the Bar and the public complain about the unfair or unreasonable rent ceiling established in a given case, not realizing that it was the product of a general plan of control and not of a duty to fix a fair or reasonable rent. The book fails to mention this and thus misses the opportunity to give its readers a proper perspective.

Another striking difference between the New York State rent control laws of the 1920's and those of the Federal Government is to be observed in the exclusive jurisdiction given by the former to the courts and in the closing of the doors to all courts effected by the Emergency Price Control Act, which denied to all Federal, State, and Territorial courts, jurisdiction over controversies stemming from the Act, until all administrative remedies had been exhausted by way of review and protest to the Administrator from lower echelons of authority. Then, and only then, could a landlord, and only a landlord,² gain admittance to the Emergency Court of Appeals, a special court created under the constitutional authority of Congress to create inferior courts. Determinations of this court were made reviewable only by the Supreme Court on certiorari. This state of affairs continued until June 30, 1947, when the 80th Congress allowed the Emergency Price Control Act to expire and enacted in its place, the present Housing and Rent Act of 1947, as amended. That Act emasculated the rent control program by omitting all provisions for criminal sanctions, treble damage causes of action in favor of the Expediter, jurisdiction over evictions, and control over hotels. In addition, the Emergency Court of Appeals was deprived of jurisdiction over all controversies except those which survived the de-

² *But see* *Parker v. Fleming*, 329 U. S. 531, 91 L. ed. 479 (1947).

mise of the Emergency Price Control Act; but access to the general courts was no longer denied. It is probable that the 81st Congress will reinstate all of these provisions, now contained in the pending bill, to the end that a revived federal rent control law will continue to be available to the government for the protection of the millions of tenants whose best hope for security of tenure in their homes and safety from exactions of excessive rents rests upon a strong law vigorously enforced. With the resurrection of the foregoing sanctions, it is likely that the temporary need for supplemental legislation such as the New York City local rent laws will no longer exist and they will be allowed to lapse. However, this does not apply to the so-called "stand-by" rent control law which the New York State legislature has enacted and kept alive against the possibility of the removal of all federal controls over housing accommodations. It is to be hoped that New York will continue this passive stand-by legislation until the need therefor is finally gone. No one would like to see a recurrence of the hiatus which for twenty-five days in July 1946 caused such havoc and created such chaos throughout the country in cities which lacked the protection afforded by the New York stand-by law.

This reviewer can only hope that the nation will soon find it unnecessary to continue any regulatory control over rents. While justified as a stop gap against inflationary trends and a protection against the emergency, the economy of the country and the social health of its people are much better off without this control in particular, and most economic controls in general.

IRA A. SCHILLER.*

THE ROOSEVELT COURT. By C. Herman Pritchett.¹ New York: The Macmillan Company, 1948. Pp. xvi, 314. \$5.00.

Twelve years ago the iconoclasts took great delight in citing Chief Justice Hughes' aphorism that the Constitution is what the justices of the Supreme Court say it is. It has never been clear to me just why that perfectly obvious dictum was seized upon as ammunition by the reformers, or why they should have derived immense satisfaction in pointing out that the judges of the Court are human. These two propositions are, to put it mildly, patent to anyone who has read even one basic history of the United States.

Professor Pritchett's book, to which he has given the subtitle *A Study in Judicial Politics and Values*, is not addressed to either of these two propositions, although at times it skirts them at uncomfortable length. This, however, is but a minor objection to an otherwise satisfactory and provocative work. It is Professor Pritchett's thesis that the Supreme Court is a political institution acting in a political context, and it is his further thesis that this institution can profitably be studied through an analysis of its nonunanimous opinions. It is in the nonunanimous opinion that Professor Pritchett finds the expression and synthesis of what he calls "the judicial attitude." "A unani-

* Chief Attorney, United States Office of Housing Expediter, New York County Defense Rental Area.

¹ Associate Professor of Political Science, University of Chicago.