

prerogatives. In the same way, the rule governing the descent of lands to co-parceners was extended to exact homage from each coheir thereby increasing the number of the king's own tenants. Finally, the law governing the alienation of lands held by knight service was applied to socage tenants, too, and this device enabled the king's agents to uncover numerous "concealed lands" and to bring them within prerogative jurisdiction. Their success exposes the ease with which Tudor bureaucrats, once given some authority, were able to catch hold of more—especially when Readings at the Inns of Court condoned new-fangledness in the laws of tenure.

Professor Thorne's exposition of Constable's commentary is a masterpiece of critical analysis and historical summation. He identifies an hypothetical ordinance (one forbidding subinfeudation by tenants in chief without royal license which Edward III's pleaders assigned to 1236 or 1246) with a legislative writ of 1256. This enables him to reconcile, with convincing argument and evidence, several fourteenth-century statements that baffled Maitland. Professor Thorne's demonstration that Henry VII's administrative policy provoked changes in the rules of tenure *in capite* is a superb example of how recourse to history, rather than to symbolic logic, can best provide an understanding of how English law was made. His introduction shows that Henry VII used the common law, as well as conciliar justice, to increase his power, and this amplifies the standard explanations of the growth of Tudor monarchy. The king's desire to shrink the swollen purses of landed men doubtless prompted a manipulation of old laws; then the Readers at the Inns, with their subtle scannings of *Prerogativa Regis* and the statutes, helped to bring these tortuous practices "within the framework of the law." By so doing, they preserved the principle that the king should govern according to duly established procedures; and so, paradoxically, their Readings played a part in the never-ending struggle to keep England's law above her king.

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PRICING OF MILITARY PROCUREMENTS. By John Perry Miller. New Haven: Yale University Press, 1949, Pp. xv, 292. \$4.00.

"TAKE the profit out of war" has long been a crowd-catching slogan. It has an understandable appeal. And no one denies that profiteering in time of war—whether "hot war" or "cold"—is an unsavory, wasteful and morale-destroying activity that should be stamped out. But as John Miller so persuasively argues in this second of the series *Studies in National Policy*, it is both undesirable and unrealistic to propose the elimination of all chance for profit in war contracts.

One of the basic tenets of our democracy is that the maximum amount of reliance should be placed on private initiative as a means of getting things done.

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This we achieve mainly by means of a system of competitive free-enterprise. We rely, in other words, on the price system to allocate our resources and to furnish incentives to efficiency. Admittedly other institutions play a part. Admittedly in time of emergency auxiliary controls such as those administered in the last war by the OPA and the WPB are necessary to meet the unusual stresses of unusual times. But since the price system is the mainspring of our economy, and since it effectively furthers our democratic aims of "insuring respect for the individual, wide-spread sharing of economic and political power and a decentralization of decision making,"<sup>1</sup> Miller believes—and I agree with him—that every effort should be made to preserve the maximum use of that system in war and crisis as well as in peace. To surrender to the use of compulsion as a substitute for price incentives would drastically alter our social and economic system and seriously jeopardize these democratic principles. Such an alteration should come—if it is to come at all—not as an accidental and hysterical outgrowth of war but as a conscious and deliberate choice of our people. Nor will such change be necessary to our survival even in a new "total war," says Miller, if we set about promptly to design flexible purchasing techniques, to shape an intelligent fiscal policy, and to educate our industries properly. What is more, he blueprints a promising start toward at least the first of these goals.

The core of the book is devoted to a study of the armed services' procurement techniques in the years prior to and during World War II and to an appraisal of the extent to which the lessons learned in World War I were put to use in improving these techniques. The story is not an inspiring one. For despite the fact that World War I demonstrated the total ineffectiveness of the traditional rigid competitive bidding system in time of emergency, little was done to substitute negotiation techniques for that system in the years of peace between the wars. Nor was anything done to correct such evils as inadequate inventory procedure, too-rigid specifications, over-estimation of needs, and unwieldy decentralization of procurement agencies. Instead, emphasis was placed almost entirely on ways and means of shackling future war profiteers. The chief lesson apparently learned was that the cost-plus-percentage-of-cost contract widely used in World War I as a stop-gap substitute for competitive bidding was so open to abuse that it should be avoided at all costs. Similarly, the only work of the Nye Committee that gained the headlines was the evidence produced by it of profiteering, and its charges that the munitions-makers led us into war; the fact that its analysis of the War Department's procurement plans pointed up the need for complete overhauling of purchasing procedure was ignored. In fact, the author points out that "The practical result of the Nye investigation seems to have been to induce increasing timidity on the part of the services in their planning for industrial mobilization."<sup>2</sup> Thus, when faced with World War II, the procurement departments of the armed services found

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1. P. 223-4.
2. P. 44-5.

themselves again unequipped to use with maximum effect the free-enterprise techniques available.

A detailed and well drawn picture is presented of the resulting procurement difficulties encountered in World War II and of the attempts made to meet these difficulties. The various forms of contract documents (letters of intent; cost-plus-fixed-fee; fixed-price; escalator; maximum-price; and target-price) are described, and their effectiveness in insuring the maximum flow of supplies with the minimum waste of our resources is evaluated. There is an interesting discussion of statutory renegotiation as a device for profit control, ending with the conclusion that it must be modified substantially and provide for liberal exemptions if it is not seriously to impair incentives to industrial efficiency. OPA's control over prices and WLB's control over salaries and wages, and the impact of these programs on the flow of goods to the military, including the controversy over whether price stabilization in the civilian goods area could be effective without similar stabilization of prices on military goods, are reviewed and appraised. In all of these studies, Miller is careful to give both sides of the story. Where free-enterprise clearly must be supplemented by direct controls, he concedes it. Nowhere does he attempt to prescribe a cure-all. Frequently he admits that the figures available are insufficient to justify reliable judgments. But step by step he examines what has been, points to obvious failures and suggests possible remedies.

The concluding chapters contain a summary of the entire problem, a re-statement of the principles and a ten-page list of 23 specific recommendations.<sup>3</sup> Much of this material is repetitious, but these chapters do have the advantage of giving to one who must read as he runs a neat capsule treatment of the entire problem and of possible ways to solve it.

The book is not without faults. What book is? I should have liked a better job of organization. There is a good deal of point-belaboring and unnecessary summation which leads to the suspicion that too little time was spent in making a book out of the separate studies now titled as chapters. This makes for some impatient reading and a recurring feeling of "This is where I came in." Occasionally, too, the author was apparently unable to resist the temptation to prove by the use of ponderous prose that he is, after all, a scholar. But such criticisms are quibbles in the light of the merit of the book as a whole. The fact that it might be a better book does not destroy the fact that it is now a very good book indeed, and the product of the sort of scholarship that we need more of.

Above all else, it is clear that John Miller knows whereof he speaks. He has drawn not only on his own experience but on that of a host of both business and military men with first-hand knowledge of the field. This combined knowledge and experience he has expertly synthesized to give help on a national problem of great urgency. The only disheartening thing about it is that the need for his book should be so immediate.

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3. Pp. 248-58.

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