

## BOOK REVIEWS

**FEDERAL-STATE-LOCAL TAX CORRELATION.** (Symposium Conducted by The Tax Institute 1953 Princeton). Tax Institute, Inc., 1954. Pp. 248. \$5.00.

This symposium, dealing with "the most compelling over-all problem" that faces the political scientist, "the problem of intergovernmental relations,"<sup>1</sup> reflects the grave difficulties encountered in seeking to deal effectively with federal-state tax relationships. Twenty distinguished tax administrators, students of public finance, lawyers, accountants and business men,<sup>2</sup> trace the attempts made to deal with overlapping federal and state taxes, grants made by the states to local governments and by the federal government to the states, and the sharing of revenues collected by the states with local governments.

The danger of conflict between federal and state taxing powers was, of course, recognized when the Constitution was adopted.<sup>3</sup> Until 1861, no problem was presented in this area because the federal government subsisted largely on its receipts from the tariff and the sale of public lands. The Civil War saw the imposition of income and inheritance taxes and a wide variety of excises by the federal government, but most of these levies were discarded. The 1894 federal income tax was invalidated by the Su-

1. Sly, p. 1.

2. Kenneth W. Gemmill, Assistant to the Secretary of the Treasury; L. L. Ecker-Racz, Fiscal Economist, United States Treasury Department; Selma J. Mushkin, Public Health Service, Department of Health, Education and Welfare; J. H. Perry, Director of Research, Canadian Tax Foundation; M. H. Gopal, Professor of Economics, Andhra University, India; Alfred E. Driscoll, Governor of New Jersey; Mabel Newcomer, Professor of Economics, Vassar College; Paul Studenski, Professor of Economics, New York University; Arnold L. Edmonds, Manager, Research Bureau, Pennsylvania State Chamber of Commerce; W. B. Sanders, Tax Executive, Crown Zellerbach Corporation; Mortimer M. Kassell, Deputy Commissioner and Counsel, New York State Department of Taxation and Finance; Dixwell L. Pierce, Secretary, California State Board of Equalization; Rowland Jones, Jr., President, American Retail Federation; William F. Connelly, Connecticut State Tax Commissioner; Allen J. Goodrich, President, New York State Tax Commission; Paul J. Strayer, Professor of Economics, Princeton University; Jesse R. Fillman, Carter, Ledyard & Milburn; George H. Kittendaugh, Manager—Tax Accounting, General Electric Company; Carter T. Louthan, Mitchell, Capron, Marsh Angulo & Cooney; and K. C. Littlefield, Manager, Tax Department, Cities Service Oil Company.

3. Thus Alexander Hamilton stated in *THE FEDERALIST* No. 33, at 194 (Lodge ed. 1888):

"As far as an improper accumulation of taxes on the same object might tend to render the collection difficult or precarious, this would be a mutual inconvenience, not arising from a superiority or defect of power on either side, but from an injudicious exercise of power by one or the other, in a manner equally disadvantageous to both. It is to be hoped and presumed, however, that mutual interest would dictate a concert in this respect which would avoid any material inconvenience." See Pierce, p. 151.

preme Court<sup>4</sup> and the Spanish-American War federal death tax was imposed only for the emergency. Thus, until the advent of World War I, federal revenues were largely confined to customs, which were forbidden to the states, or to excises which the states had not used extensively.<sup>5</sup> And the states and local governments relied almost exclusively on the property tax, which was denied to the federal government by the constitutional prohibition of direct taxes unless apportioned in accordance with population.<sup>6</sup>

By 1952, however, the situation was radically altered; \$79 billion in revenues were collected by federal, state and local governments. Taxes collected by federal and state or local governments, or both, overlapped in many areas, as the following table shows:<sup>7</sup>

<i>Tax</i>	<i>Federal</i>	<i>State</i>	<i>Local</i>
Individual income tax	\$28 billion	\$900 million	\$80 million
Corporate income tax	\$21 billion	\$850 million*	
Death and gift taxes	\$800 million	\$200 million	
Excises and general sales taxes	\$9 billion	\$6 billion*	

\* This includes a small amount of revenue collected by a few local governments.

Recommendations and studies designed to prevent overlapping of taxes have studded our history; indeed one paper covering twenty pages in the symposium is designated as an "annotated bibliography" describing only the last ten years of such efforts!<sup>8</sup> The milestone Groves Report published in 1942 had recommended greater uniformity in federal and state income tax bases, revision of the estate tax credit, federal collection of tobacco taxes to be shared with the states, the continued use of liquor taxes by both the federal government and the states and the withdrawal of the federal government from gasoline taxation.<sup>9</sup> It proposed intensified cooperation in tax administration and the creation of a federal-state fiscal authority. This comprehensive report resulted in no legislation. In 1947 an equally comprehensive report, prepared by a Joint Committee of the American Bar Association, the National Tax Association, and the National Association of Tax Administrators, recommended that taxes on transfers of property during life and at death and those on gasoline, motor vehicle registration, general sales, amusements and admissions be reserved for the states, which in turn should relinquish tobacco taxes for

4. *Pollock v. Farmers Loan & Trust Co.*, 157 U.S. 429, *rehearing*, 158 U.S. 601 (1895).

5. *Pierce*, pp. 151-52.

6. U.S. TREASURY DEPARTMENT, COMMITTEE ON INTERGOVERNMENTAL FISCAL RELATIONS, *FEDERAL, STATE AND LOCAL GOVERNMENT FISCAL RELATIONS* 57 (1942).

7. See *Gemmill*, pp. 5-9.

8. *Ecker-Racz*, pp. 14-33.

9. See note 6 *supra*.

exclusive federal use, but that both federal and state governments continue to exploit liquor taxation.<sup>10</sup> Again, no legislative action resulted despite industrial state support for this program. Such efforts continue—the latest is the report of the Commission on Governmental Functions and Fiscal Resources created at President Eisenhower's request. But the fiscal and political difficulties standing in the way of a practical program of allocating areas of taxation among the federal government and the states are so imposing as to give little real hope of its actual adoption within the foreseeable future.

The authors also deal with federal grants-in-aid to the states. There is a long history of such grants, which played an important role through land grants in the development of state universities and colleges, the growth of our great highways and the development of a comprehensive public assistance program.<sup>11</sup> Such grants-in-aid typically begin by the grant of federal funds conditioned on the matching of the funds by the states. School lunches, highways, hospital construction, health, natural resources development and public welfare assistance have been aided through such grants.<sup>12</sup> Grants-in-aid are playing an increasingly important role in our fiscal pattern and, indeed, constitute the most widespread and far-reaching device being used for integrating the federal-state taxing systems. Indeed, in view of the plight of most states and localities and the growing pressures on them for added public services, if we are to solve the critical inability of our bursting and inadequate educational system to meet the needs of a rapidly increasing school population and the traffic congestion which is choking virtually every American city, federal grants-in-aid would appear to be necessary on a vastly expanded scale. The problems presented by federal grants-in-aid have recently been dramatized for the nation through the White House Conference on Education, at which the need for federal funds to aid education was virtually universally recognized, but there was deep concern that grants of federal funds might infringe on local control of the educational system, along with sharp controversy as to how the funds should be allocated.<sup>13</sup> Professor Newcomer makes a critical appraisal of the basic arguments against grants-in-aid—that home rule is undermined and centralization of control results, that there is a distortion of services provided and that wealth is redistributed wastefully and spent irresponsibly; she concludes that despite defects and dangers in grants-in-aid, the grant system is sound.<sup>14</sup>

The third general method of integrating federal and state tax systems (and state and local tax systems) discussed in the symposium is by the sharing of revenues among various taxing agencies although collected by a single taxing authority. This device has not been used by the federal

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10. Ecker-Racz, p. 17.

11. Newcomer, pp. 91-94; Mushkin, pp. 34-44.

12. See note 11 *supra*.

13. See Straight, *Schools: U.S. Emergency*, New Republic, Dec. 12, 1955, p. 6.

14. Pp. 94-100. See, however, Professor Studenski's argument in *Alternatives to Grants in Aid*, pp. 101-13.

government (except to the extent that credits for state tax payments allowed under the federal estate tax and unemployment insurance levies may be regarded as sharing) but it has been used widely by the states, which collect state-wide taxes that they share with local governments. A major stumbling block impeding the development of tax sharing (this problem is also presented in respect to grants-in-aid) is the basis for sharing. If the source of collections is used as the basis for sharing, the rich states or areas will receive the lion's share of the revenue badly needed by the poorer states or areas.<sup>15</sup> If population is to be the basis of sharing, the richer areas are likely to oppose the use of their funds to support poorer areas. Thus, the loud outcries annually heard in New York City against the use of funds there collected by the state to aid upstate rural areas would be greatly intensified if Mississippi farmers received the benefit of New York City collected funds. These problems, together with the jealousy with which the states safeguard their taxing powers, gives little immediate hope that wider tax-sharing of federally collected revenues is either likely to be adopted on a large scale or that, if adopted, it would seriously reduce overlapping federal and state taxes.<sup>16</sup>

The authors also refer to the noteworthy steps taken in integrating the federal and state taxing systems at the administrative level. The magnitude of the administrative problem cannot be unduly emphasized. There are over 150,000 taxing jurisdictions in the United States; some income taxpayers must file three tax returns with varying determinations of income and deductions. A nation-wide business may have to prepare and file forty-eight different corporate tax returns and comply with widely-varying sales tax regulations of thirty states and hundreds of cities, counties and school districts.<sup>17</sup> Administrative reform is, therefore, of great importance. In this area significant improvements have been made through the increasing adoption by the states of substantially the federal definition of net income and in some cases the laying of state income taxes as a percentage of the federal levy; and in addition progress has been made in cooperative auditing of certain taxes.

One other general area of intergovernmental relations discussed by the writers deserves note, the area of interstate conflicts. Significant progress has been made in attempting through cooperative action of the states to obtain greater standardization of formulas apportioning state taxes measured by net income from business transactions. Largely as a result of the scholarship and persistent prodding of the National Tax Association, twenty-five of the thirty-five states which impose corporation net income taxes have adopted the so-called Massachusetts formula;<sup>18</sup>

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15. Strager, pp. 196-98.

16. See Perry, *Intergovernmental Fiscal Arrangements in Canada*, p. 53; Gopal, *Union-State Financial Relations in India*, p. 71. The interesting papers dealing with the Canadian and Indian efforts to solve problems of intergovernmental fiscal relations offered little help in solving our problems because they arose out of different historical, political and economic backgrounds and needs.

17. Connelly, p. 188.

18. Kittendaugh, p. 207.

much still remains to be done even in this area because, unfortunately, there are a number of different methods for allocating sales by states using the Massachusetts formula.<sup>19</sup> In the double domicile conflict, arising in death tax cases, substantial progress has been made through the adoption of an arbitration procedure for disposing of domicile conflicts.<sup>20</sup> Also, where a person lives in one state and works in another, reciprocal credits have been devised to prevent duplicate taxation.<sup>21</sup>

The speakers at the symposium, it is thus apparent, wrestled with grave and formidable problems. And the writers have rendered a significant service in bringing together in one volume a statement of the basic facts and a critical presentation and appraisal of the alternative solutions to the problems of intergovernmental fiscal relations.

However, this reader closed the volume with a feeling that his high expectations from the distinguished group assembled for the symposium had not been completely fulfilled. Perhaps the group suffered from severe space limitations, the papers consuming an average of about ten pages each. One would have preferred to have had the number of papers considerably reduced, in order to have furnished the authors a greater opportunity to develop their views. This reader felt in a number of instances that he was being served an intellectual appetizer, which merely whetted his appetite, and that the authors were cut short before they could get into the meat of their analyses and proposals. Nevertheless, this volume should prove highly useful in the continuing search for effective and politically practicable methods of cutting through the highly important and equally tough problems of inter-governmental fiscal relations.

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**THE MORAL DECISION.** By Edmond Cahn. Bloomington: Indiana University Press, 1955. Pp. ix, 342. \$5.00.

Professor Edmond Cahn, a profound legal philosopher, aims this book at laymen. His subject is morals. His method resembles law school classroom discussion with this difference: he gleans moral rather than legal knowledge from litigated cases. Before turning to this case method Cahn orients his readers in a fifty-eight page apologia—the best though not the easiest part of the book.

Cahn wants the motivating force and semantic push that characterizes study of vivid cases.<sup>1</sup> He claims another strength for his method. "How

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19. Connelly, p. 186.

20. *Id.*, pp. 207-08.

21. *Id.*, pp. 185-86.

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1. His promise to enliven each moral issue by posing it in concrete form is not always kept. For example, after stating and discussing for two pages a claim for

often," he says, "when we cannot decide which of many alternative courses is *right*, we find ourselves utterly certain that one particular course is *wrong*." (p. 11).<sup>2</sup> The dilemma, however, has four horns: (1) tangible good works, (2) palpable misdeeds, (3) generic righteousness, and (4) abstract evil. Concrete behavior can be adjudged legal and moral as well as illegal and immoral. The nature of abstract wrongfulness is just as general as the nature of abstract righteousness—especially in systems, like Cahn's, recognizing most behavior to be neither especially good nor particularly evil.<sup>3</sup>

The book is not bare of abstractions about the nature of the good. With a quick, wide look to the past, Cahn divides moralists into two classes: "There are the ethical systems that emphasize the good as *happiness*, and there are those that emphasize the good as *righteousness*." (p. 12). Then follows a legalistic figure of speech, hard for laymen to understand:

"The operations of the good qua happiness tend to resemble those of a successful *administrative* process. They call more for judgment in the sense of a human resource than a judgment in the sense of an acquittal or condemnation. They call for expertness, adaptability, and a talent for accommodation. . . . On the other hand, the good qua righteousness invokes the incidents of a judicial process. It operates like a court; it enjoins, it acquits or condemns."

Cahn continues:

"With this analogy in mind, the American lawyer might suggest there are many moral problems that are best suited to an administrative disposition subject to a judicial review, that is, moral problems that we may handle best by concerning ourselves primarily with values in human happiness and by bowing to a rigorous mandate of conscience only when conscience can find no acceptable basis whatever for the course we have chosen." (pp. 15-16).

This American lawyer's anonymity is thin; he sounds like Edmond Cahn who earlier abjured bold attempts to talk abstractly about the good.

His discussion of morals continues in legal metaphor. A "Moral Constitution" and "Moral Legislation" affect moral decisions. (pp. 16-34). The process of framing this moral constitution is not unlike that used by natural law philosophers deducing precepts from the inherent nature of

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marriage annulment made by Harry S— against Bessie who beguiled him into marriage, Cahn tires of these little people and their narrow dispute and embarks on a thirteen page ramble about American attitudes on marriage, their historical antecedents, and heart balm suits. (pp. 94-110). A twelve page abstract discussion of death and suicide is appended to a problem of the survivorship of Mark Twain's rights in an unpublished manuscript. (pp. 232-43).

2. This recalls Cahn's *SENSE OF INJUSTICE* (1949) in which he turned from attempts to describe justice in favor of the definition of the unjust.

3. Cahn says: "Humanity being what it is and behaving as it does, an effective ethical regime must reserve some intervals and recesses for conduct which is morally neutral." (p. 163).

man.<sup>4</sup> Cahn's theory is that men can frame a moral constitution because they all have three abilities: (1) they can stand off and judge themselves; (2) they can put themselves in others' places and circumstances; (3) they have in their biological equipment a sense of wrong.<sup>5</sup> Cahn only sketches in passing the articles of his Moral Constitution (p. 29)—a smaller handful than, for instance, Hobbes' collection of general moral precepts,<sup>6</sup> but Hobbes comes to mind because he, like Cahn, sums up in the golden rule. Cahn's resemblance to natural lawyers should not turn modern relativists too much against him for he is quick to say that wide abstract precepts exert little force when specific moral decisions are made. (p. 20).<sup>7</sup>

Cahn's "Moral Legislation" is more specific, more potent, and less immutable. Tenets of a moral code are learned by children; this learning starts and molds their consciences. But Cahn does not hold with those who (like Savigny<sup>8</sup>) turn folkways into yardsticks of law and right. Though society formulates and teaches children norms of conduct, each maturing child reworks these norms into tools of self control. When he applies the reworked norm to a specific moral problem, he "re-legislates" the norm. So Cahn rejects both the power and the propriety of moral authoritarianism. Lawyer-like, he says, "If what ultimately counts in the moral process is the making of particular moral decisions then no one can relieve us of that burden or deprive us of that power unless he makes the concrete decision for us. . . ." (p. 25).<sup>9</sup> Still, of course, social forces count. "Moral legislation" is produced by the group at work in individuals. We see it in objective behavior because a subjective individual has enacted it in his conscience." (p. 31).

Many writers have dealt with the relation of law to morals, but Cahn's comparison of law-in-action with morals-in-action throws light on the structure of morality. Since law and morals solve the same kinds of specific problems, moral tenets—like laws—are often flexible and instrumental. Cahn puts it this way:

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4. See, e.g., Jean Dabin, *General Theory of Law*, in *THE LEGAL PHILOSOPHIES OF LASK, RADBRUCH AND DABIN* 225, 419 (1950).

5. This is his description of the sense of wrong: "Our reaction to an act of moral wrong is a blend of reason that recognizes, of emotion that evaluates and of glands that pump physical preparations for action. In a single combined response, our muscles tighten and our judgment condemns, anger fills us with heat or our spirits slide down with sorrow." (p. 18). Compare Cicero's ". . . there is really no expiation for crimes against men or sacrilege against the gods. And so men pay the penalty, not so much through decisions of the courts . . . but guilty men are tormented and pursued by the Furies, not with blazing torches, as in the tragedies, but with the anguish of remorse and the torture of a guilty conscience." *THE LAWS* bk. I, § 14, at 341 (Keys transl. 1928).

6. See HOBBS, *LEVIATHAN* cc. 14 and 15.

7. Even John Dewey, who insisted that ". . . ends arise and function within action," DEWEY, *HUMAN NATURE AND CONDUCT* 223 (1922), put unselfishness into his system. "Within the flickering inconsequential acts of separate selves dwells a sense of the whole which claims and dignifies them." *Id.* at 331.

8. SAVIGNY, *VOCATION OF OUR AGE FOR LEGISLATION AND JURISPRUDENCE* (Hayword transl. 1831).

9. Does Freud give men "legislative power" over their own "super-egos"?

"The real purpose of moral ideas is to teach; they are time-tested tools for educating ourselves. Once we recognize this, the old static diagram of commands and precepts changes before our gaze into a fluid, moving process—similar to the process we observed in the workings of the law." (p. 41).

This conclusion will be rejected by uncomfortable liberals who, sensing social needs for fluidity, are willing to cut law loose from immutability but try to hold morals tight.<sup>10</sup> Not unnaturally, then, we find Cahn believing with the Utilitarians that criteria for judging moral norms and legal norms must be much the same:

"There are moral values in law and moral values outside the law; the only practical difference between them is in the respective methods by which they are enforced. Those who hold this view will insist there is absolutely no formula of division by which one can determine *a priori* where a specific moral value will be given its enforcement. A moral problem may summon the sheriff, the school, the home, the business association, the social group, the church, or any combination of these, depending exclusively on how the community at that particular stage in its development has chosen to assign the functions of prevention and punishment." (p. 47).<sup>11</sup>

And yet Cahn does not belong entirely with the Utilitarians and their pragmatist progeny. Dewey, for example, was happy to defend the Utilitarians against the charge that they exaggerated the role of rational thought in human conduct,<sup>12</sup> and his legal disciple Walter Wheeler Cook espoused the view that "an application of scientific methods of inquiry to the field of 'values' (ethics and politics, including law) will make our choices of 'ends' more intelligent, better grounded, less subject to caprice."<sup>13</sup> While Cahn, too, avows ". . . the incessant moral duty to exercise intelligence" (p. 251), his system of morals uses science only as a handmaiden and professes a moral technique differing from scientific method.

In two ways Cahn's moral decider differs from a scientific discoverer:

(1) The scientist steels himself against subjective, personal and emotional

10. For example Dabin, *supra* note 4, at 351, says, "The instrumental character of law expresses a fundamental difference between law and morals . . . it would be wrong to present the moral rule, even the positive moral rule laid down by an external authority, as a mere means with a view to an end. . . . In reality moral law, natural or positive, confines itself to translating the requests of the one and only morality."

11. Cf. AUSTIN, LECTURES ON JURISPRUDENCE 127 (3d ed., Campbell 1869): "In so far as law and morality are what they ought to be . . . legal and moral rules have been fashioned on the principle of utility." Mill in his *Utilitarianism* says, "We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his conscience." MILL, UTILITARIANISM 59 (Everyman's Lib. ed. 1863).

12. DEWEY, *op. cit. supra* note 7, at 221-22.

13. In the symposium MY PHILOSOPHY OF LAW 51, 59 (1941).

reactions; he constantly tries to work only with calculated, cold, impersonal reason. Cahn calls on the man wrestling with a moral problem to use his "sense of wrong," defined to include emotional as well as rational parts. "Wisdom," he poetically says, "is neither dry nor cold but moist and warm; it resides not only in the head but throughout the body, in the veins, the glands, and the dispositions of nerve and muscle." (p. 252). (2) Science functions on the *authority* of intellect and training; the non-scientist has no obligation to make his own scientific decisions beyond using judgment to avoid quackery; the scientist with every reason to respect and no reason to doubt a brother scientist often takes that brother's conclusions on faith. But for Cahn moral decisions are properly made only by those faced with moral problems; they may not farm out their moral problems without ducking responsibility, and they cannot farm them out except by turning them over to a selected superior and becoming his puppet.

Cahn is not a whole-hearted instrumentalist. Even though he views some tenets, moral and legal, as tools, his morality includes some fixed goals, goals to be worked toward as distinguished from tools for working toward them. This is illustrated by his first concrete case. A seaman, Holmes, was tried for his part in forcing fourteen men from an overcrowded life boat. The trial judge charged the jury that those thrown overboard to save the rest should have been chosen by lot. Cahn, with Kantian respect for man as an end in himself, disagrees: "[I]f none sacrifice themselves of free will to spare the others—they must all wait and die together." (p. 71). There is a beautiful rejection of scientific quantification in Cahn's moral alchemy by which he transforms man into humanity. "Whoever saves one, saves the whole human race; whoever kills one, kills mankind." (p. 71).<sup>14</sup>

*Clarence Morris* †

**SPEAK TRUTH TO POWER, A QUAKER SEARCH FOR AN ALTERNATIVE TO VIOLENCE.** American Friends Service Committee, 1955. Pp. vii, 71. \$.25.

Commencing in 1949 the American Friends Service Committee has issued a series of studies on international peace. The previous studies have addressed themselves to specific suggestions for reducing tension and have only obliquely challenged the basic reliance upon force as the cornerstone of American policy and international politics in general. *Speak Truth to Power* addresses itself to the whole concept of military strength and the concept of force, and thus it constitutes an exposition of the pacifist viewpoint of the Quakers.

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14. For a less Kantian view condemning instrumentalism as inadequate, compare Fuller, in *MY PHILOSOPHY OF LAW* 113, 118-25 (1941).

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The book, however, is not an official publication of the Religious Society of Friends, but was prepared for the executive board of the American Friends Service Committee by a committee of thirteen individuals of considerable prominence in Quaker affairs and was approved by the executive board for publication. In fact, this slender pamphlet may be taken as a most comprehensive, albeit compressed, exposition of the Quaker world-view as applied to the international world of our times.

The seventy pages of this pamphlet are so distilled and so spare and cogent that a summary of argument cannot do justice to the full brief. The premises upon which this concept of non-violence is based are familiar enough; Christian literature abounds in such exposition and it has been the traditional Quaker witness for several centuries. The world, and particularly the West, believing that an end which at any given juncture in history appears to be good can be achieved by means which are known to be abominable, has regarded this concept as irrelevant. *Speak Truth to Power* is a most cogent and compelling argument for its preeminent relevance. Although a religious insight is at its base, the pamphlet is not concerned with the religious concept per se but rather with the world-view which it engenders and the practical application of that view.

The initial analysis of the world scene, of the evils and paradoxes inherent in the American response based upon military power, is perceptive and scarcely admits of serious disagreement. The shortcomings of the "security" of mutual terror, which are apparent to all, and the growth of the Leviathan state—security conscious and ubiquitous—are inevitable by-products of this response. The writers contend that the American response has been inadequate and they claim that it has actually fostered the influence of the Soviet Union and the appeal of communist doctrines; that it has confirmed the Marxist doctrine within communist countries; that it has resulted in a steady erosion of the values which distinguish us from the communist world. The latter is said to include the spawning, to at least some degree, of all of those characteristics traditionally associated with totalitarianism: spying on fellow citizens; anonymous denunciations; restrictions on freedom of movement, speech and assembly; persecution for beliefs unaccompanied by acts; the weakening of the presumption of innocence; the militarization of society; the confusion of dissent with disloyalty; the breakdown of the integrity of denotative language (*e.g.*, the phrase "the free world" to include totalitarian states not under Soviet control); and finally the constant increase in the concept of the infallibility of the state in matters of internal and external security. As a consequence, our moral standards have been debased to the point that a doctrine like massive retaliation produces some political carping but scarcely a ripple of moral revulsion.

One reason for the sober and respectful consideration with which Quaker criticism is and has been received is that Quakers, themselves, do not fall into the same beguiling "devil" theory in regarding these phenom-

ena as they decry in the American response to Russia. They do not find conspiracy in high places or Machiavellian motives on the part of our leaders. On the contrary they find that all of our moves, fully debated, have been taken in good faith and in the belief that they would lead to peace. Nor, of course, have the Quakers ever succumbed to the blandishments of parlor pacifism—the widespread delusion of the Twenties and Thirties that war could be done away with by publicizing its horrors in four-color ads and by preventing little boys from playing with tin soldiers, without attending to the difficult problems of the world. Furthermore, the pacifist concept here advanced is not to be confused with “return to normalcy” or isolationism.

The thesis is advanced that the enemy is not the Soviet Union or communism but certain beliefs and actions common, to a degree, to both the East and the West—lust for power, materialism, atheism, the ubiquitous state and the cult of violence. The study recognizes that there does exist a moral basis in the East-West conflict: the Judaeo-Christian philosophy of man's innate worth and dignity (which, however inchoate, unrealized and diluted, is still part of the political and cultural tradition of the West) as opposed to the avowed materialism, atheism and authoritarianism of the Marxist-Leninist world-view. In fact it is this very moral basis to which they would have us adhere and, at long last, put into practice. The Quakers see the centuries-old dichotomy in Western society between this ethic and the practice of violence as a dualism possible only when war and the preparation for war make only partial demands. They see this era as drawing to a close now that security based on violence involves total participation and total destruction.

The study proceeds to recount Quaker experience with non-violent techniques in the fields of prisons, the insane, slavery, the social sciences and in international and intercultural conflicts from William Penn's experience with the American Indian to the non-violent revolution in British India. From this experience the Quakers proceed to a specific, non-utopian and non-mystical explanation of the practical policy of non-violence. The study delineates the difficult but unmiraculous pattern of non-violent resistance. This is no soft-headed daydreaming, nor are there overtones of martyrdom or a morbid preoccupation with other-worldliness.

The plea is directed primarily to individual commitment to non-violence, and the fulfillment of the promise which is held for this course presupposes such conviction by great numbers of people. Governmental change of policy is inconceivable without this change in conviction. The writers aver that the renunciation of violence by America would realize a vast potential, and they claim that any nation in this fear-ridden age which had the courage to trust this fundamental Christian precept and, indeed, to trust completely the democratic process instead of placing faith in the illusory security of an atomic stockpile, would speak with undreamed power to enslaved men the world over. Thus the great social revolutions in

progress in the uncommitted one-third of the world could be supported and not opposed and would cease to look to communist nations for support. Thus also expanded programs of technical and economic assistance could be carried on, not unilaterally but under United Nations auspices, and with a greatly multiplied effect by reason of not being a subsidiary maneuver in the military power struggle, which it must be acknowledged, such programs are and have been. The study concludes that it is only when material power has been rejected as the basis for security that men can give both unreserved and responsible support to the claims of justice internally and throughout the world. "We suggest that from now on, peace will not be for the strong, but for the just, and further, that there will neither be peace until men learn to be just, nor justice until men determine to renounce violence." (p. 41).

The pamphlet thus argues that a change of attitude in the direction of non-violence would produce a world climate in which mutual disarmament could be effected and bring into being world situations in which actual rather than illusory "positions of strength" could be created. But the argument concedes that in the last analysis pacifism would logically require unilateral disarmament. In this event, if hatred has gone so far that even a revolutionary policy of peace could not prevent international aggression, a disarmed nation would not passively permit an invader to enslave it, as is so often believed of pacifist policy. On the contrary, it would carry on a constant program of non-violent resistance in which there would be total non-cooperation with the invader. Trains would not be run to transport troops, ships would not be unloaded, factories would not be operated to produce military supplies, etc., while a policy of good will toward the individual invading soldier would be maintained. Quakers, who have always lived dangerously, recognize that this would likely result in mass reprisals and ultimately in many deaths, but, it is rejoined, not so many as would result from H-bombs. And, more important, the policy would ultimately prevail and the moral basis of society would not be extinguished as it would surely be in the total war which our present policy necessarily envisages as a last resort.

In short, both the present American policy and the Quaker policy assert that the "last resort" of each will not come to pass if the respective policies are pursued with vigor and skill. The Quakers say that the present policy has not been a success and that, moreover, its last resort—total war—is worse, morally and practically, than the Quakers' last resort—occupation fought with methods of non-violent resistance.

Few will read this pamphlet without being compelled to a reexamination of the moral basis of international policy. But few will be convinced that, risk for risk, the admittedly perilous course of military security and the immoral and anti-democratic attitudes which it spawns are not safer than the perils of unilateral disarmament. It is true, as the Quakers contend, that the policy has resulted neither in real peace nor real security.

On the other hand, it has not resulted in real war or in complete lack of security. We have somehow gotten through the first decade of the era of mutual terror and few will be persuaded to exchange this precarious security to flee to dangers which they know not of.

This study was completed and approved for publication prior to Geneva. Assessment of Geneva is still premature and perhaps presumptuous here. May it not be imagined, however, that historians will see it as a mutual renunciation of violence in a limited area? Did not the Soviet Union and the United States there agree that their mutual enmity and distrust were to continue, and that each regarded the situation in general and the posture and actions of the other as intolerable, but that neither would employ force to eliminate these "intolerable" situations? It is a part of the Quaker argument that absolute weapons have made the pacifist approach the only practical solution, as well as the only moral one; the same factors would appear to have been operating in disguise at Geneva.

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## BOOKS RECEIVED

- ANTI-TRUST LAWS: A COMPARATIVE SYMPOSIUM.** W. Friedmann, Editor. Toronto: The Carswell Company Limited, 1956. Pp. vii, 635. \$12.00.
- THE BLESSINGS OF LIBERTY.** By Zechariah Chafee, Jr. Philadelphia: J. B. Lippincott Company, 1956. Pp. 350. \$5.00.
- CALEB CUSHING: ATTORNEY GENERAL OF THE UNITED STATES 1853-1857.** By M. Michael Catherine Hodgson. Washington, D.C.: The Catholic University of America Press, 1955. Pp. viii, 247. \$2.75 (paper bound).
- CHARLES BEARD AND THE CONSTITUTION.** By Robert E. Brown. Princeton: Princeton University Press, 1956. Pp. 219. \$3.50.
- CHARLES EVANS HUGHES AND AMERICAN DEMOCRATIC STATESMANSHIP.** By Dexter Perkins. Boston: Little, Brown & Company. Pp. xiv, 200. \$3.50.
- CHIEF JUSTICE JOHN MARSHALL: A REAPPRAISAL.** W. Melville Jones, Editor. Ithaca: Cornell University Press, 1956. Pp. xviii, 195. \$3.00.
- CIVIL LIBERTIES IN THE UNITED STATES.** By Robert E. Cushman. Ithaca: Cornell University Press, 1956. Pp. xiii, 248 (paper bound).
- COMMENTARY ON THE CONSTITUTION OF INDIA (vol. 2, 3d ed.).** By Durga Das Basu. Calcutta: S. C. Sarkar & Sons Ltd., 1956. Pp. lvi, 847. \$8.50.
- CONGRESSIONAL POLITICS IN THE SECOND WORLD WAR.** By Roland Young. New York: Columbia University Press, 1956. Pp. 281. \$4.50.
- CONTRACTS TO MAKE WILLS.** By Bertel M. Sparks. New York: New York University Press, 1956. Pp. 230. \$5.00.
- COPYRIGHT LAW SYMPOSIUM NUMBER SEVEN.** American Society of Composers, Authors and Publishers. New York: Columbia University Press, 1956. Pp. xvi, 252. \$4.00.
- DISABILITY RETIREMENT IN INDUSTRIAL PENSION PLANS.** By W. Michael Blumenthal. Princeton: Industrial Relations Section, Department of Economics and Sociology, Princeton University, 1956. Pp. 62. \$2.00 (paper bound).
- THE FEDERAL LOYALTY—SECURITY PROGRAM.** Report of the Special Committee of the Association of the Bar of the City of New York. New York: Dodd, Mead & Company, 1956. Pp. xxvi, 301. \$5.00.
- THE FIRST COPYRIGHT STATUTE: AN ESSAY ON AN ACT FOR THE ENCOURAGEMENT OF LEARNING, 1710.** By Harty Ransom. Austin: University of Texas Press, 1956. Pp. xiv, 145. \$3.75.
- FREEDOM IS AS FREEDOM DOES.** By Corliss Lamont. New York: Horizon Press, 1956. Pp. xviii, 322. \$3.95.
- FREEDOM'S FETTERS.** By James Morton Smith. Ithaca: Cornell University Press, 1956. Pp. xv, 464. \$5.00.
- FUNDAMENTALS OF LEGAL RESEARCH.** By Ervin H. Pollack. Brooklyn: The Foundation Press, Inc., 1956. Pp. xviii, 295. \$5.00.
- INTERNATIONAL LAW AND ASYLUM AS A HUMAN RIGHT.** By Manuel R. García-Mora. Washington, D.C.: Public Affairs Press, 1956. Pp. vi, 171. \$4.50.
- JAMES WILSON: FOUNDING FATHER.** By Charles Page Smith. Chapel Hill: University of North Carolina Press, 1956. Pp. xii, 426. \$7.50.
- LAWS CONCERNING THE NATIONALITY OF SHIPS.** United Nations Legislative Service. United Nations, N.Y.: United Nations, 1956. Pp. x, 203. \$1.50.
- LEGAL PROBLEMS IN ENGINEERING.** By Melvin Nord. New York: John Wiley & Sons, Inc., 1956. Pp. ix, 391. \$7.50.
- MANUAL FOR PROSECUTING ATTORNEYS (2 volumes).** Morris Ploscowe, Editor. New York: Practising Law Institute, 1956. Pp. vi, 697 (paper bound).

- OF LAW AND MEN. By Felix Frankfurter. New York: Harcourt, Brace & Co., 1956. Pp. xiii, 364. \$6.75.
- PARKING: LEGAL, FINANCIAL, ADMINISTRATIVE. Joint Committee on Urban Traffic Congestion and Parking, The Eno Foundation for Highway Traffic Control. New York: Columbia University Press, 1956. Pp. xii, 196 (paper bound).
- PEACEFUL USES OF ATOMIC ENERGY: PROCEEDINGS OF THE INTERNATIONAL CONFERENCE IN GENEVA, AUGUST 1955 (vol. 13). New York: United Nations, 1956. Pp. viii, 393. \$7.00.
- PENSIONS AND PROFIT SHARING (2d ed.). By Herman C. Biegel *et al.* Washington, D.C.: The Bureau of National Affairs, Inc., 1956. Pp. xi, 296. \$6.50.
- THE POWER ELITE. By C. Wright Mills. New York: Oxford University Press, 1956. Pp. 423. \$6.00.
- PRIVATE FOREIGN INVESTMENT: LEGAL AND ECONOMIC REALITIES. By Seymour F. Rubin. Baltimore: The Johns Hopkins Press, 1956. Pp. xi, 108. \$3.50.
- RELIGION, MORALITY AND LAW. Arthur L. Harding, Editor. Dallas: Southern Methodist University Press, 1956. Pp. xi, 109. \$3.00.
- REPORT OF THE INTERNATIONAL CONGRESS OF JURISTS: ATHENS, GREECE, JUNE 13-20, 1955. The Hague, Netherlands: International Commission of Jurists, 1956. Pp. 164 (paper bound).
- REVIEW OF HUNGARIAN LEGISLATION; ADMINISTRATION OF JUSTICE IN THE HUNGARIAN PEOPLE'S REPUBLIC. István Kovács, Editor. Budapest: Hungarian Lawyers' Ass'n, 1955. Pp. 30 (paper bound).
- RUSSIA AND AMERICA: DANGERS AND PROSPECTS. By Henry L. Roberts. New York: Harper & Brothers, 1956. Pp. xxxvi, 251. \$3.50.
- SEC ACCOUNTING PRACTICE AND PROCEDURE. By Louis H. Rappaport. New York: The Ronald Press Company, 1956. Pp. xii, 555. \$15.00.
- SOME PROBLEMS OF PROOF UNDER THE ANGLO-AMERICAN SYSTEM OF LITIGATION. By Edmund Morris Morgan. New York: Columbia University Press, 1956. Pp. xii, 207. \$3.50.
- STRATEGIC INTELLIGENCE AND NATIONAL DECISIONS. By Roger Hilsman. Glencoe, Illinois: The Free Press, 1956. Pp. 187. \$4.00.
- THE USE OF HISTORY IN THE DECISIONS OF THE SUPREME COURT: 1900-1930. By John J. Daly. Washington, D.C.: The Catholic University of America Press, 1954. Pp. xv, 233. \$2.50 (paper bound).
- VAGARIES AND VARIETIES IN CONSTITUTIONAL INTERPRETATION. By Thomas Reed Powell. New York: Columbia University Press, 1956. Pp. xv, 229. \$3.50.
- WAS JUSTICE DONE?: THE ROSENBERG-SOBELL CASE. By Malcolm P. Sharp. New York: Monthly Review Press, 1956. Pp. xxxvi, 216. \$3.50.