

for neutrality? It is doubtful, to say the least. While the book provides some refreshing analysis and a comprehensive treatment unavailable elsewhere, the main features of the neutrality arguments have been repeatedly presented to Congress. It is not likely that the new volume will have any immediate effect. A previous product of Harvard's International Program in Taxation, Barlow and Wender's *Foreign Investment and Taxation*, is often credited with influencing in large measure what ultimately became the "Foreign Business Corporation" in the Boggs Bill. However, the "Foreign Business Corporation" proposal was concessionary in nature and in its early stages drew substantial support from industry. The explicit and implicit proposals of *The Foreign Tax Credit* would require legislation which would increase the tax costs of operating abroad. And insofar as the current administrative proposals parallel those of *The Foreign Tax Credit*, active and vigorous industry opposition is in full swing.

But consider the possible long range effects. The volume brings together in scholarly form most of the policy considerations bearing on the making of value judgments at the technical level of the foreign tax credit mechanism, and at the general level of federal income taxation of foreign source income. For the neutralist, the book will be a joy to behold; a book for guidance in doing further battle against erosion of the income tax base. Concessionists, of course, will not care for its tone or philosophy. However, for neutralists and concessionist alike it could have a sobering effect because it portrays the need for study in depth of the factors bearing on the making of tax policy and tax law in the most complex of modern societies.

V.

In the final analysis, *The Foreign Tax Credit*, the thirteenth hard-cover product of Harvard's International Program in Taxation, constitutes an important contribution to the critical literature dealing with federal income taxation. If it has shortcomings it is only because time deals so harshly with almost all such efforts.

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IN DEFENSE OF PUBLIC ORDER: THE EMERGING FIELD OF SANCTION LAW.

By Richard Arens and Harold D. Lasswell. New York: Columbia University Press, 1961. Pp. x, 314. \$7.50.

The basic proposition put forth by the authors in this book is an apparently simple and convincing one: the sanction system of modern American society is operating at much below an optimum level, impairing many basic values which it should protect. Therefore, it should be subjected to systematic study, designed to improve its actual operation. Few will quarrel with this basic

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proposition and had the authors limited themselves to presenting it in a short article, the only possible criticism might have been that the idea itself is not new, having already been systematically presented in Bentham's *Theory of Legislation*. It is in the overstatement of this basic idea and the suggested methods for realizing it that the book is open to serious doubts.

One of the difficulties to be overcome before the essence of the book can be grasped is a heavy barrage of concepts and classifications which often obscures, rather than clarifies, the presentation.¹ Once this barrier is surmounted, it seems that the basic reasoning of the authors can be reduced to two main theses:

1. The sanction system of the United States is in very bad shape.
2. The sanction system can be radically improved by application of rational decision making methods and social science knowledge.

Let us examine these theses and their supporting evidence. The authors repeatedly claim that the present ". . . sanctioning policies are confused, inconsistent, and fraught with dangerous consequences for the basic values and institutions of the United States."² This claim is supported by a number of illuminating illustrations in which present sanctioning policies do conflict with various postulated basic values of American society. Accepting, for argument's sake, these illustrations at face-value,³ they undoubtedly do point out the need for more or less reform in various branches of law and sanction practice, but fail to bear out the claim that basic values and institutions are indeed seriously endangered by the operation of the existing sanction system.

In order to prove such an assertion, the authors would have to offer evidence of substantial dysfunctional effect of the sanction process on basic social values and institutions, rather than give illustrations which may well be valid by themselves and do need attention, but are often rather marginal to the basic social institutions. Furthermore, the list of postulated values is far from complete, concentrating more on individual aspects of social life than on collective aspects. For instance, the primary goal of national security and survival is not explicitly analyzed, with consequent distortions in the discussions of various limitations imposed on individuals for reasons of national security.⁴

1. *E.g.*, "By the expression identity we have reference to the primary ego of any person or group, to the egos which are included with the primary ego to constitute a self, and to the egos that are perceived as other than self." P. 172.

2. P. 12.

3. Many are open to discussion. See, *e.g.*, the one-sided presentation of the economic implications of certain kinds of taxation (p. 139).

4. *E.g.*, in connection with denial of passport (p. 36); the federal loyalty-security program (pp. 37, 75, 81, 82, 105-06); use of electronic devices of surveillance (p. 41-43); disloyalty dismissals (p. 67); control of mass communication (p. 110); the Smith Act (p. 151-54). While there may be legitimate differences of opinion on the necessity for these and other actions, it is impossible to evaluate them without taking into consideration the imperative needs of national security and survival under present international conditions.

Having adopted a very pessimistic attitude in describing the present state of the sanction system, the authors go to the other extreme in expressing the over-optimistic belief that present social science methods and social science knowledge can explain social relationships, thus providing a reliable basis for a scientific sanction system:

The intellectual and procedural tools now at the disposal of the social and behavioral sciences, properly adapted and applied, are capable of providing a continuing flow of intelligence and appraisal information concerning the impact of any detail of the social process upon the context of values and institutions in which the detail is located.⁵

With all due respect, it seems that we are in fact too far from sufficient knowledge on basic psycho-social processes to possess a direct guide to the solution of social problems, including construction of an optimal sanction system. Without going so far as Joseph W. Krutch⁶ or Pitrim A. Sorokin,⁷ most serious social scientists will be the first to recognize present limitations of their own studies. Among the weaker areas of the social sciences one must include the sociology of law. Our knowledge of the relationships between law and society and the impact of law on society is very limited indeed,⁸ and cannot be regarded at present as a sound basis for erection of a reconstructed sanction system. Neither have modern quantitative decision making techniques and equipment progressed beyond very limited problems and their present contributions to public policy making are very limited indeed.⁹

Here we reach a point basic to the contribution of Lasswell to modern thought, namely the very concept of "policy sciences"¹⁰ and the possibilities of rationalizing public policy making by adopting a method of rational decision making and relying on scientific knowledge. A rational decision making model would include at least four elements: A set of alternatives; sets of predictions concerning the probable outcomes of each of the alternatives; a set of weighted values at which to aim; and a method for identifying the one alternative the expected results of which provide the highest degree of net

5. P. 259.

6. "... we have been deluded by the fact that the methods employed for the study of man have been for the most part those originally devised for the study of machines or the study of rats, and are capable, therefore, of detecting and measuring only those characteristics which the three do have in common." KRUTCH, *THE MEASURE OF MAN* 32 (1954).

7. SOROKIN, *FADS AND FOIBLES IN MODERN SOCIOLOGY AND RELATED SCIENCES* (1956).

8. For a critical survey of contemporary knowledge in these fields, see Dror, *Law and Social Change*, 33 TUL. L. REV. 787 (1959); Dror, *Prolegomenon to a Social Study of Law*, 13 J. LEGAL ED. 131 (1960).

9. See Hitch, *Operations Research and National Planning—A Dissent*, 5 OPERATIONS RESEARCH 718 (1957).

10. LERNER & LASSWELL, *THE POLICY SCIENCES: RECENT DEVELOPMENTS IN SCOPE AND METHOD* (1951).

value realization.¹¹ These various elements are dealt with—under a different nomenclature¹²—in the present book, its basic purpose being advocacy of rational decision making in connection with the sanction system. Insofar, therefore, as the rational decision making model cannot serve as a guide to public policy making, one of the basic premises of the book cannot be accepted.

The issue has been ably stated in a recent article by Charles E. Lindblom.¹³ Lindblom's main thesis is that limitations on knowledge, on the integrating capacity of the human mind and on the political-social feasibility of defining goals, prevent application of a rational decision making model to public policy making. Rather, public policy making can be improved mainly by a system of incremental corrections, in which marginal changes in policy are considered in the light of available experience and knowledge and introduced gradually.

While the rational decision making model looks much more "rational," it does seem that the incremental method—which we can also characterize as a process of continuous approximation to optimal solutions—seems much more in accord with the stubborn facts of reality.¹⁴ While there can be no doubt of the desirability of improving public policy making, it does seem that stage-by-stage improvement rather than total reconstruction is the main method for doing so, especially in a democratic society. Here, too, modern decision making techniques and social sciences have much to contribute,¹⁵ but without presuming the ability to analyze and reconstruct whole systems. We are not in the position of social engineers building or rebuilding a social system or a system of sanctions, but rather of repairmen dealing with a very complex and mainly unknown system, who on the basis of careful study and cautious action can hope to improve slowly and by stages the working of society.

The present book does make an important contribution by emphasizing the need for reform in the sanction system, by pointing out some of its weaknesses and illustrating some possibilities for improvement. Also, one should mention the many original and challenging ideas dispersed in various chapters, which make reading the book a very stimulating experience indeed. Nevertheless, it may well be that a short, clear and straightforward statement in conventional language based on a more realistic appraisal of human potentialities could have much better communicated the ideas of the authors and would have contributed more to the actual improvement of the sanction system.

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11. See, e.g., BROSS, *DESIGN FOR DECISION* 18-32 (1953).

12. See, e.g., p. 9.

13. Lindblom, *The Science of "Muddling Through"*, 19 *PUB. ADMIN. REV.* 79 (1959). See also Lindblom, *Policy Analysis*, 48 *AM. ECON. REV.* 298 (1958).

14. See, e.g., MARCH & SIMON, *ORGANIZATIONS* 137-42 (1958); Banfield, *Ends and Means in Planning*, 11 *INT'L SOCIAL SCI. J.* 361 (1959); Pfiffner, *Administrative Rationality*, 20 *PUB. ADMIN. REV.* 125 (1960).

15. See, e.g., Langrod, *The Rationalization of Methods and Means of Action in Public Administration*, 12 *INT'L SOCIAL SCI. J.* 369 (1960); LYND, *KNOWLEDGE FOR WHAT?* (1939); LEIGHTON, *THE GOVERNING OF MEN* (1945).

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