Mr. Barzun has written a spirited and witty defense of individual liberty, a valuable counter-irritant to the numerous totalitarian philosophies now competing for the loyalty of the world. Democracy, his argument runs, is not a system but a culture; its essence lies not in forms of government or indeed in any forms, but in concrete practice by persons, and in the values they hold. It can never be perfect, since there are so many tyrannies, open and disguised, that encroach upon it on every hand. It can be advanced, however, by the unremitting effort of each to act for himself in sturdy piecemeal opposition to every senseless rigidity wherever he finds it. Democracy is only betrayed by slogans, collective orthodoxies and the common device of defending ourselves against one absolute by embracing another. No matter what creed or hypothesis is offered us, we can safely use it only by discrimination in the acceptance or rejection of particulars.

From this sturdy platform he snipes with his squirrel-gun at the absurdities of numerous contemporary absolutes—revolutionary culture, esthetic classicism, race supremacy, the pedantry of science and "scholarship," progressive education, and the myth of perfect government. Nowhere is he more effective than in ridiculing the vacuities of learned language. "No one says 'To be or not to be'; it is always 'The matter of existence considered in terms of a debatable question.'" Or, instead of writing, "Brothers and sisters often fight," the child psychologist intones, "Siblings evince a tendency towards mutually antagonistic responses." Social science "is one long sausage string of terminology and nomenclature." "When a family tries a new brand of corn flakes it is an experiment. When the window sticks, we have a method. A fact is not a fact but a piece of data; we no longer simply 'try' anything." And so, "false literacy and science worship have made us into a people of imitative pedants." To educate, as Aristotle said, is not to present the student with a pair of shoes but to impart to him the art of shoemaking.

But, with all this wholesome urge for directness, clarity and diversity, Mr. Barzun himself is betrayed by one of the oldest clichés in the liberal tradition—a dogma that is as dangerous as any other. This is a universal distrust of government. The less government the better, he seems to believe, and the only possible change in government is a change in the persons who compose it. The moment a person gets behind a governmental desk he becomes a different person—a ruler. Where has Mr. Barzun lost his power to discriminate, his deep feeling for distinctions? Surely no more arrogant absolute was ever uttered than that "to date there has been on this earth only one kind of government, to wit, oligarchy, or the rule of the few." That is a convenient enough stick with which to beat those who want to exchange our government for something better, but if Mr. Barzun
were subject to a worse government than ours—and there are several now flourishing in the world—he might trip over it.

This attitude toward government is not just a single logical slip which may be excised from the rest of his thinking without injuring it. It is the spot where the weakness of his body of thought comes most clearly to the surface. After all that he has said is said—however pungently and truly—there is something besides individual virtue in a society that allows anybody to be as free and conscientious as Mr. Barzun is in this book. Something of which he is not conscious insulates his cultivated urbanity from the rude lightnings that might under other weathers burn it crisp. Science, art and liberty, however necessary to the human soul, are also luxuries that can be achieved only at a price.

The author confronts none of the classic problems of freedom. What is the meaning of the individual man apart from the society in which he swims? Where are the boundaries between the individual and the social? How much do we need collective effort, and what kind, in making sure that we are clothed, fed, housed, protected against hostile prowlers, and given leisure enough to invite our souls? Whose freedoms do we want to safeguard, and freedom to do what? Hitler himself is fighting for Lebensraum. If there were not some social criterion, referrent to the liberties of others, he might be the great exponent of liberalism.

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Amid the flood of books dealing with Spain’s tragedy, no comprehensive work on the legal and diplomatic aspects of the conflict had been published until the appearance of this notable volume by Professor Padelford of the Fletcher School of Law and Diplomacy. In scholarship, objectivity, keen analysis and monumental industry, it is a magnificent tribute not only to the talents of the author but to the Fletcher School and to the Bureau of International Research of Harvard University and Radcliffe College which supplied the wherewithal for research and publication.

Some of Professor Padelford’s material appeared earlier in the American Journal of International Law. Here it has been revised, amplified and brought down to the end of the struggle. Five hundred pages of documents, some of them translated and published for the first time, comprise the bulk of the volume. They will prove invaluable to those in need of a full compilation of source materials. The text, which is fully documented in itself, surveys with brilliant historical and legal erudition the status of the contestants, interference with foreign shipping, the non-intervention system, the role of

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the League of Nations, a problem in diplomatic and consular relations, the
policies of the United States and the termination of hostilities. Here in well
ordered and readable form is not merely a full treatment of one of the major
diplomatic episodes of recent years but an extremely useful presentation of
all the problems and principles of international law pertaining to civil con-

flict and intervention.

In only one respect—but this a crucial one—does Professor Padelford ex-
pose himself to severe criticism. In his preoccupation with the narrowly
legal and diplomatic aspects of his subjects he has lost sight of the forest
because of the trees. In his Preface he disclaims any desire to write a his-
tory of the conflict or “to fathom the causes of the disturbance, to assay the
issues at stake, to trace the course of hostilities, or to analyze the political
consequences.” And yet his valued judgments of diplomatic decisions are
inseparable from his unacknowledged assumptions on all of these matters.
He is elaborately judicious and impartial. Far above the dust of battle, he
is unconcerned with the human aspects of the disaster or with the moral and
political implications of the betrayal of the Spanish Republic to Fascism by
the governments of the western democracies. One might almost infer that he
welcomed Fascist victory, for he finds that League action and “non-inter-
vention,” which played directly into Fascist hands, were “something of a
triumph for the collective system of handling international difficulties. The
weight of the League’s influence was placed behind the principle that a peace-
ful and orderly society of States is predicated upon the fulfillment of duties
as well as upon the protection of rights.” And again: “Credit is due to the
statesmen who were able to evolve the ambitious accords and the interna-
tional administration which have gone under the title of the Non-Interven-
tion system, and to their diplomatic acumen in enlisting as much coopera-
tion and observance as they did. None would deny the extensive circumven-
tions . . . Yet the net result in both law and diplomacy appears to have
been a gain.”

A “gain” for whom? Dr. Padelford evidently believes that his story rep-
resents a gain for principles of law and practices of international collabora-
tion. He cannot or will not face the inescapable fact that the principles and
practices which he finds so praiseworthy had but one purpose and but one
result: the destruction by force of a legitimate and recognized democratic gov-

ernment by international Fascism, aided and abetted at every turn by the apos-
tles of “appeasement” in London and Paris. If this result was a “gain” for
order and law in the society of nations, then the abandonment of China, the
conquest of Ethiopia, the betrayal of the League of Nations, the destruction
of Austria, Czechoslovakia, Albania and Poland, would also appear to be
“gains.”

Dr. Padelford is concerned with form rather than content, with words
rather than deeds, with shadow rather than substance. No system of law can
survive when its custodians pervert its principles to promote the cause of
anarchy and injustice. And it is no answer for any legalist, however aca-
demic his pretensions, to reply that he is not concerned with justice or with
humanitarian considerations. A law which becomes a cloak for criminality is
a law which is doomed to death. If international law is to live, those con-

cerned with its survival must in the future make impossible such crimes as

It would be a good deal easier to be fair about Mr. Kennedy's Dividends to Pay if he had indicated more clearly for whom the book was written. The style, described by the jacket as "lusty and spirited," and the filmy character of much of the reasoning suggest that it is intended for the general trade. If so, too rigorously scholarly an attitude would be out of place. The grumpy academic too frequently insists on rigor at the expense of dramatic effect. But Mr. Kennedy appears to believe he has discovered New Truth, and not that he has merely staged the old more effectively. If, then, we have what purports to be a contribution to economic thought, as well as a primer for the public, we have some right to expect a reasonably careful analysis.

The first or "statistical" section of the book contains what, I suspect, the author would regard as his significant new offering. Thus we run into trouble right away in trying to restate Mr. Kennedy's thesis. The figures are, as he alleges, simple enough. The statistics of income of the United States Bureau of Internal Revenue show, to anyone who cares to glance at them, that of all corporate net income (subtracting net losses) much the greatest part in dollar volume is made yearly by a very small number of corporations each making over a million dollars. They show, however, that the proportion of corporate net income going to this million dollar class increased sharply from 1925 to 1929. So much is clear and indisputable, but equally without significance until interpreted.

Mr. Kennedy draws a remarkable number of inferences from these rather meagre statistical facts. The following are some of the things he seems, at least, to imply:

1. A small number of corporations make most of the dollar volume of net income. This is undeniably true, and has been demonstrated before more thoroughly by the Twentieth Century Fund in Big Business, Its Growth and Place. It should perhaps be pointed out that it is equally true that a small number of companies (10% in 1929) make most of the losses (79% in 1929).

2. Big corporations make most of the money. This, though true (again as demonstrated by the Twentieth Century Fund) is inadequately proven by Mr. Kennedy, who bases his estimates of size wholly on net income and thus proves that the companies that make most of the money make most of the money. Again we can flip the coin and show, using the same reasoning, that companies showing deficits of more than a million make most of the losses, specifically, more than 48% of the deficit of all corporations in 1933. And these corporations were less than two one-thousandths of all active

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corporations! Even in 1929 less than one one-thousandth of all active corporations made 44% of the losses, these being the ones that lost over a million. This does not, of course, affect Mr. Kennedy's conclusion, though perhaps it changes the overtones a bit.

3. Mr. Kennedy seems at times to be trying to prove that a small number of individuals make most of the individual income. Everyone has, of course, known this for years from individual income tax returns, but Mr. Kennedy takes the hard way and tries to show that it is a result of the lopsidedness of corporate income figures. He shows that some 17,088 people each received in 1929 over $40,000 in dividends. Their total dividend receipts equalled $1,950,000,000. By dividing this figure by the total dividend payments of 960 giant corporations, he gets a figure of .69. Therefore, he implies apparently without logical qualms, these 17,088 persons owned 69% of the 960 giant corporations. The conclusion is not only unrelated to the premise, but is also probably wrong. It is hard to believe that such non sequiturs can be due solely to innocent error.

4. One of the book's main contentions is that "a few companies thrive monopolistically while the bulk of the companies are in danger of perishing competitively." (p. 46). The argument is, in effect, that since "all the companies with consistently large profits" (as measured in absolute money terms) "are big companies" (as measured by their net money incomes) (p. 71), therefore only these few companies have a high rate of profit. Mr. Kennedy concedes at one point that profits must be expressed as a percentage of total investment to be compared with one another. But his only attempt to do this is to take twenty-three large companies all of which made over $20,000,000 either in 1929 or 1937 and calculate their percentage profits. He calls this carefully selected group of the most profitable big corporations, Industry, Inc., and speaks of it as "a representative section of big business." (p. 169). In spite of this selection, excluding the big money losers and moderate profit makers, he gets a profit ratio of only 11% in 1925 and 13% in 1929. According to the very careful recent study by Professor Crum of Harvard, all the profitable corporations with less than $50,000 worth of assets made an average of 12% of net worth in the depression year 1931. Now the analyses of both Professor Crum and the Twentieth Century Fund show that the big profitable companies as a group make a smaller per cent of net worth than the little profitable companies and the same holds for losses.

It is true that if you average losers and winners together, the big companies on the average do somewhat better than the little, but this is because a number of small companies make very large percentage losses and not because small companies seldom make large percentage profits. Further, as Mr. Henry Hazlitt points out, if you include in corporate profits the salaries of officers, as in many cases seems reasonable, you find, as Professor Crum has shown, that the rate of profit for losers and winners averaged together declines rapidly as the size of the firm increases. Thus the lopsidedness of corporate earnings does seem to be due, in spite of Mr. Kennedy's difficulty in believing it, largely to a similar lopsidedness in corporate net worth.
5. Another conclusion the author draws from the figures is that the gains of the few big corporations from 1925 to 1929 were at the expense of the many little ones, that "the profits of more than 99% of all corporations were being cut by more than a third" while the incomes of the million dollar ones were increasing 40%. (p. 16). It is equally true, separating off the million dollar losers, that the losses of these giants increased by 65% while the profits of much more than 99% of all corporations increased 18%. Needless to say, nothing is proved by this sort of juggling. The truth is that the profits of all profitable corporations making less than 1,000,000 dollars a year stayed almost constant in this period, while losses of losing corporations (big and little) mounted to offset partly the gains of the big ones. Of course, as Mr. Hazlitt has pointed out, all this reasoning takes no account of changes in the numbers of corporations falling in these various classes. Such changes, as one reviewer has contended, may not affect materially the result, but for all Mr. Kennedy appears to know, they might have reversed it completely. One pie may come out well in spite of sloppy cooking, but we are not encouraged thereby to eat more.

The author's conclusion that the recovery of 1937 favored the big boys even more than that of 1929 is based entirely on his estimate that corporate net income could not possibly be more than four billion in 1937. Now that the Treasury Department has released the figure of well over seven billion, some revision of his percentages is called for.

6. One more conclusion is drawn from the simple figures quoted, namely, that the great monopoly corporations made money during the twenties not only at the expense of little business — of all other business, but at the expense of the whole American economy. It is Mr. Kennedy's conviction "that the country as a whole was not prosperous" even in 1929, that during the boom "there was very little increase in purchasing power." On this conviction, nowhere supported, he bases his theory of the depression. It is an under-consumptionist explanation of a sort that is very, very familiar indeed. As the boom proceeds, profits pile up much more rapidly than wages, industry expands its productive plant too rapidly for a lagging consumer demand to keep it busy. Finally, the whole thing collapses. What is the statistical evidence on this matter? According to the latest estimates by Dr. Simon Kuznets, the national income paid out expanded from 1925 to 1929 by about thirteen billion dollars, nearly 19%, or almost thirteen times as much as corporate net income expanded. Of this total national income, the proportion going to wages and salaries increased from 68.1% to 69.2%, representing an increase of about seven and a half billion dollars cash in the pockets of consumers, while dividends to the greedy capitalist went up by one and a half billion. One could go on citing figures of employment, production, etc., ad nauseam to demonstrate the patent absurdity of the contention that the big corporations wrung the economy dry for their profits.

I have felt it worthwhile to examine in some detail Mr. Kennedy's "statistical" argument because it has been taken in some quarters to be an important contribution to economic thought. The rest of the book — and as the jacket says, there is "much, much more that can be read with ease and joy" — is devoted to developing the contention that the only money-
makers are monopolies, describing the decline of the classical entrepreneur a la Berle and Means, extending the underconsumptionist argument, and berating business for cutting costs by firing employees when demand is cut in half! To explain the logical lacunae in this latter section on the ground that the book is "popular" is to do the populace a great injustice.

A few samples will do as illustration. "Profits in American industry are almost in direct proportion to the extent to which competition has been eliminated." (p. 75). In the over-twenty-million income class fall great sleepy monopolies like A. & P., the Woolworth Company, and Sears, Roebuck. The losses of the depression "have all been borne by the middle-sized and little fellows who still occupy a competitive, not a monopolistic, position in our scheme of things." Yet the steel industry, which lost money in 1931, 1932, 1933 and 1934, "has been the most significant example of planned monopoly that our industry affords." (p. 95).

Had the author read any good modern economics texts of the sort he criticizes for being old-fashioned, he might have avoided such old-fashioned errors as measuring the degree of monopoly by the per cent of profit per dollar of sales. If he had no axe to grind, would he compare employment in 1918 with that in 1929 to prove that employment has fallen steadily, when any year (except 1921) since that hectic war period, when every hand was busy, would have shown employment substantially less than 1929?

As to the chapter on the False Fronts of Capitalism, those who like to picture the industrialist plotting greedily in hotel rooms will be delighted with it. Those who blame that man in the White House and his friends for the troubles of business will grow purple under the collar. Those who find the source of our ills not in devious machinations by any group but rather in well-meaning confusion, ignorance, and stupidity will feel a little disappointed that Mr. Kennedy has done so little to dispel the fog.

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This book does not give us a complete picture of the philosophy of law of Mr. Justice Wilson. One cannot deal adequately with Wilson's views on the separation of powers, the maintenance of state's rights, or the limitations of the powers of government without dealing with the specific issues involved against the background of the history of Wilson's time. The speeches of Edmund Burke, to which Obering often refers, are no adequate substitute for a careful analysis of what Mr. Justice Wilson was talking about. It is Obering's thesis, however, that in the main the philosophy of law which Justice Wilson had, he derived from Hooker who "sought his arguments in Aristotle, Augustine, Aquinas, Bellarmine, and others of the long line of scholastic

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writers." The presentation of Wilson's views thus becomes in this book the presentation of what is supposed to be the scholastic natural law. Obering's Study reminds us of the importance of the natural law idea in American history. It also explains inadvertently why the natural law idea is currently in disrepute.

While Obering's study reminds us of the importance of the natural law idea in American history, his study in this regard is quite incomplete and sometimes misleading. It is correct to say that many of the founding fathers believed in some theory of natural law. The reading list sent by Thomas Jefferson to Peter Carr indicates the tradition in which some of the founding fathers were at home. And we know that Jeremiah Gridley told John Adams that the lawyer in this country must study "not only the common law but also civil law, and natural law, and admiralty law." But it is not correct to assume that all of the founding fathers had the same idea of the natural law. Obering frequently reasons from the position ascribed to Wilson to the position of the founding fathers in general. Thus, because Wilson justified the revolution on the rights of Englishmen does not justify the statement that "Hence, also, we must deny Professor McIlwain's contention that the final and fundamental constitutional demands of the Americans found support in the doctrine of the English Radicals, who were more or less under French Revolutionary influence, rather than in the traditional English Whig doctrine." Obering's study would have been aided if he had referred to Haines, The Revival of Natural Law Concepts; Becker, The Heavenly City of the Eighteenth-Century Philosophers; Wright, Jr., American Interpretations of Natural Law; and Merriam, American Political Theories.

Obering worries somewhat over Justice Wilson's refusal to accept the idea that law always supposes a superior whose command it is, because he saw "lurking the Divine right theory of Kings." The natural law idea is in disrepute partly because people suspect the kind of things that may be lurking in its shadow. This book will do nothing to allay the suspicion. The author's interpretation of Aquinas is contradictory. His statement that natural law changes in operation and effect only in that our knowledge of it increases is correct only if by natural law he means the first precept of the natural law and the necessary conclusions, which would always be true. He is on safe ground when he insists that the natural law is based on reason. But he then goes on to claim that private ownership of property is necessary according to the natural law, and actually cites Aquinas who says that "the ownership of possessions is not contrary to the natural law." Obering has slid over the distinction between conclusions and determinations from the natural law, although in another portion of his book he recognizes the distinction. Since determinations can go either way, one arrives at a much less absolute view of the law in action than Obering cares to espouse when he is talking about private property. After his statement concerning reason, he concludes that

1. Letter of August 19, 1785.
3. Ibid. 524 (1926).
"without the supreme legislating Reason of God, the moral law becomes nothing more than a code of table manners." He criticizes Wilson's theory of the right of punishment (the prevention of crime) because Wilson did not realize that "the right to punish for wrong doing is the original right of Him, who is the Author and Guardian of the universal moral order, and can be found in men only by participation." He feels that Wilson's theory is objectionable because it would not "allow the criminal law to take cognizance of glaring offences against God such as public blasphemy, and it would deny to criminal law the right to proceed against the lily-fingered gentleman anarchist, who confines his direct action to wild talk, and yet would demand, that his poor dupe, who throws the bomb should be hanged." For some reason Obering thinks that to deny the right of a court to overrule legislation is to assert the "modern slave theory of the omnipotence of the State." The twisting use that Obering is making of the natural law may make all of us wonder about the shadows.

Finally, Obering misunderstands the modern legal realist. It is undoubtedly true also that the modern legal realist misunderstands Obering, and would misunderstand him even if he were clear. But to refer to Cardozo as the advocate of juristic pragmatism which at the end means "unqualified tyranny" is to treat the whole world as your enemy and is not a useful "letter to the gentiles."

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These two volumes, the first by a young American scholar, the second by one of the outstanding British authorities on international law, fill a long-standing gap in the literature on British treaty practice. To say that each is not only a definitive study in its field but also a model of scholarly analysis and appraisal is to understate the merits of both these essays.

Dr. Stewart attempts, and with eminent success, to trace the evolution and present pattern of intra-Commonwealth and international treaty-making. About one-third of the volume is devoted to the developments prior to 1914. Another third deals with the post-1914 increase in Dominion independence of Whitehall in treaty-making capacity. The final chapters are concerned with present-day treaty-making procedure, the federal problem as to Canada, Australia, and India, the Inter-Se doctrine as to Commonwealth treaties, and the more technical aspects of treaty drafting. Fifteen appendices bring

5. I am afraid that C. K. Allen in his third edition of Law in the Making is similarly unappreciative when he speaks of "Jazz Jurisprudence." Allen, Law in the Making (3d ed. 1939) 45.


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together a judiciously selected list of documents, not easily available else-
where, illustrative of the history and present techniques in treaty procedure.

The author has produced what amounts to a manual of practice. It is
a field about which much has been written but in which little adequate
collation has been attempted. His study not only of the official sources but
of British and Dominion literature makes the volume both authoritative
and informative. But it is more than a manual of practice. For at many
points where controversy over legal powers and correct procedure has arisen
in Dominion treaty-making, he offers critical comment as shrewd as it is
sound. His “summary and conclusion” is a searching review of the chief
problems of policy—such as armaments limitation, neutrality, Far Eastern
diplomacy in their bearings on independent treaty-making. He indicates
that, however independent in theory, the actual prerogative in treaty-making
for all members of the British Commonwealth is still vested in the Crown.
But since the Statute of Westminster (1931), the Crown has been divided,
in this field, into more parts than Gaul! Dr. Stewart does not attempt to
trace the implications of the division into the future. He has stated, with
admirable clarity and precision, the existing arrangements. His study is
indispensable to their intelligent understanding.

Dr. McNair, now Vice-Chancellor of Liverpool University, has once
more given us a model treatise in international law. It is indeed one of
those “teachings of the most highly qualified publicists” referred to in
Article 38 of the Statute of the Permanent Court of International Justice—
which will take its place among the classics.

He treats his subject under the usual rubrics—the conclusion, the inter-
pretation, the scope and operation, and the termination and modification of
treaties. He has utilized not only the records of conferences and the evi-
dence from the treaties themselves, but the Foreign Office files. Here he
has discovered not only illuminating official memoranda and opinions but
many private and off-the-record correspondence which reveal the origins of
practice and the incidence of policy on legal action. On each major question
he synthesizes “practice and opinions” in a brief critical note which will
provide the diplomat, the jurist, and the student for many years to come
with the most authoritative available commentary.

It is impossible to summarize in a review—of any length—so detailed
a study as this. Fourteen subjects are treated under the conclusion of treaties,
thirteen under their interpretation, three under their scope and operation,
fourteen under their termination and modification. Over twenty pages are
devoted to the effect of war on treaties—a question now tragically again
paramount in the legal sections of foreign offices. Here, as throughout the
work, the numerous quotations and excerpts from hitherto unavailable
sources gives the author’s comments unique and pragmatic value. Dr.
McNair has not only added to his already recognized stature as a scholar
but has made a very real contribution to Anglo-American “teachings” in
the field of international law.

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