

REVIEWS

CONGRESS AT THE CROSSROADS. By George B. Galloway. New York: Thomas Y. Crowell Company, 1946. Pp. 374. \$3.50

EVENTS of recent years have brought sharply into focus the role of Congress in the structure and functioning of our government. In all modern industrial nations the press of technological and social change has completely revolutionized the processes of government. The sweeping range of state intervention required to maintain some sort of balance and order in society, the extreme complexity of formulating and administering that necessary regulation, the need for constant adjustment and refinement of the controls undertaken, have combined to raise the problems of modern government to a new and unprecedented magnitude.

Nor has the change been less profound in this country because we have continued to operate within the framework of free enterprise. On the contrary, the attempt to control a complex economic and social system by somewhat indirect and remote methods often poses more intricate questions than direct state operation of economic enterprise under a system of nationalization or socialization. Thus the effective regulation of privately owned utilities, by administrative and judicial rate fixing, demands a more delicate piece of governmental machinery than the blunt establishment of rates by a state owned and operated bureau.

By and large, the changes forced by this shift from a laissez-faire to a service state have taken place exclusively in the executive branch of our government. The main flow of new state activity has burgeoned forth in a vast expansion of our bureaucracy—a tremendous increase in size, an unprecedented shift in form and function. Our other political institutions—the legislature, the judiciary, the political party—have so far resisted the impact. Neither in organization, procedure, nor size of staff have they altered materially in the last hundred years.

Congress at the Crossroads is a study in the failure of Congress to adapt itself to this new situation. Mr. Galloway was staff director of the Joint Committee on the Organization of Congress—the LaFollette-Monroney Committee—whose well-handled hearings and report led to the passage last summer of the Legislative Reorganization Act.¹ The picture he gives us is brightened by this inside point of view. Mr. Galloway has obviously hob-nobbed with enough congressmen in the course of his work to obtain the flavor of congressional operations.

As Mr. Galloway makes clear, Congress has fallen down sadly in the performance of its three main functions—law making, supervising the bureaucracy, and representing and informing the public. The simple facts are that

1. Pub. L. No. 601, 79th Cong., 2d Sess., (Aug. 2, 1946).

the initiative in law making has shifted to the President, who formulates the legislative program and presses for its enactment; that the actual drafting of most important measures is done by the bureaucracy or by private groups; and that the role of Congress is largely one of registering approval or disapproval, or approval with minor modifications. So far as supervision of executive agencies is concerned, the efforts of Congress are haphazard and disconnected, often ineffective, and frequently needlessly oppressive. As to the representation of public opinion, there is good reason for feeling that Congress is usually behind the public and that it is far more likely to be representing the conservative organs of public opinion than the real interests of its constituents.

There has been a public tendency, Mr. Galloway notes, to write Congress off as incompetent or useless, or both. Obviously nothing could be more dangerous. The role of Congress has certainly changed; it must, for instance, turn to the administrative agencies for considerable guidance in framing legislation. But the very growth of the administrative process, cut off from direct responsibility to the electorate, reinforces the critical position of Congress as the most significant bastion in our democratic institutions. It becomes of utmost importance, therefore, to reappraise the functions of Congress in the modern era and to take the steps necessary to convert it into an effective and forceful instrument.

Mr. Galloway attributes the shortcomings of Congress primarily to inertia in failing to revise its antiquated machinery of operation, and he suggests a number of reforms, many of them rather detailed in character. While the book is curiously lacking in emphasis upon the relative significance of the numerous proposals for change, it does contain suggestions for relieving the Congressman of the overwhelming but petty burdens which now largely occupy his time, for furnishing members and committees with a more adequate staff, for abolishing the seniority system as the basis for selection of committee chairmen, and for encouraging a more cooperative relationship with the executive branch through creation of a Joint Executive-Legislative Council. Apparently Mr. Galloway also favors curtailment of the powers of the House Rules Committee and limitation of the Senate filibuster.

The importance of these reforms would be difficult to overestimate. Mr. Galloway gives a graphic description, for example, of how a Congressman spends his time in Washington and how he uses the pitifully small staff allotted to him; a glimpse can be caught in the quotation from Congressman Luther Patrick of Alabama:

"A Congressman has become an expanded messenger boy, an employment agency, getter-out of the Navy, Army, marines, ward heeler, wound healer, trouble shooter, law explainer, bill finder, issue translator, resolution interpreter, controversy oil pourer, gladhand extender, business promotor, convention goer, civic ills skirmisher, veterans' affairs adjuster, ex-serviceman's champion, watchdog for the under dog, sympathizer with the upper dog, namer and kisser of babies, recoverer of lost baggage, soberer of dele-

gates, adjuster for traffic violators, voters straying into Washington and into toils of the law, binder up of broken hearts, financial wet nurse, good samaritan, contributor to good causes—there are so many good causes—cornerstone layer, public building and bridge dedicator, ship christener—to be sure he does get in a little flag waving—and a little constitutional hoisting and spread-eagle work, but it is getting harder every day to find time to properly study legislation—the very business we are primarily here to discharge, and that must be done above all things.”²

It is not surprising, under such working conditions, that so few of our legislators even grasp the nature of the job that Congress ought to be working on now.

Or take the equally elementary matter of staffing. This is an age of experts. The basic strength of the bureaucracy, in relation to the other institutions of government, resides to a very large degree in the sheer force of numbers. There are hundreds of thousands of employees in the executive branch studying the problems of the country, assembling data, learning from experience. Prior to the Legislative Reorganization Act the top salary paid to committee clerks (with very few exceptions), was \$3900 in the Senate and \$3300 in the House; committee staffs, including stenographic force, ranged from one to ten people; the Legislative Reference Service had a professional staff of 58 to handle congressional demands running at a rate of 15,000 per year; the Senate and House drafting services together embraced only eight lawyers, two law assistants and four clerks. Some improvement has been made by the Act but even now a Senator is allowed only \$13,920 and a Representative only \$9,500 for a staff that spends most its time running minor errands for constituents or answering mail. It is scarcely surprising that Congress finds most current activity of government taking place outside the scope of its control, and that it largely fails to understand what is going on, much less to establish basic policies for guidance or supervision.

Some of the changes Mr. Galloway recommends have, as indicated, been incorporated in the Legislative Reorganization Act. But that Act is at best a feeble first step in the reconstruction of Congressional machinery. A real revival of the legislative institution, moreover, depends upon more than changes in machinery. In fact, the sheer mechanical improvement in congressional efficiency might well operate to hamper the over-all operation of government unless Congress can be geared into a functioning whole designed to meet the issues of the day. This reorientation depends upon factors basic to our political structure. Mr. Galloway's book, unfortunately, throws little light on some of these more fundamental issues.

One matter on which we should have more information, for instance, is the interesting question of what kind of men actually compose Congress as it exists today. Mr. Galloway does summarize some of the facts with regard to

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the age, education, occupation and geographical representation of the members. He makes no effort, however, to go beyond the readily available data. But certainly a more complete insight into the manner of men who form the Congress—their economic and social background, their personal predilections, their tenderness to various pressures—is essential to any understanding of the capacity of the legislature to deal with the problems of the modern world, or to obtaining for service in the legislature the men best qualified to carry on its functions.

Linked with this question of personnel is the problem of representation. It would be important to have a careful study, which Mr. Galloway's book does not attempt, of the reasons for the consistent failure of Congress over the past several decades to represent the real needs of the electorate in a period of growing crisis. Undoubtedly the answer lies partly in various restrictions upon suffrage, such as the poll tax, but there are other factors going to the basic political health of the American people.

This leads to a third, and perhaps the most significant, aspect of the problems of Congress—the party system. The weaknesses of Congress reflect our weak, schizophrenic parties, undisciplined and unable to agree on a program. This situation has prevailed in America since, more than a century ago, the Whig party abandoned the rugged honesty of conservative Federalism and began to affect a spurious color of liberalism. It is only through realignment of party forces and reinvigoration of the party system that we are likely to find the basis for a Congress alive to the problems of today, representative of the real interests of the electorate, and prepared to cooperate with the executive in a coordinated, affirmative program.

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ECONOMIC POLICY AND FULL EMPLOYMENT. By Alvin H. Hansen. New York: McGraw-Hill Book Co., 1947. Pp. 340. \$4.00

WRITTEN both for students of economics and for readers who are not professional economists, this book consists partly of essays in persuasion and partly of new contributions to economics. While Professor Hansen is primarily concerned in the present study with showing how the current recommendations for maintaining full employment are related to economic analysis, he occasionally goes beyond his role of advocate to investigate new developments in economic theory.

The principal emphasis throughout the book is on ways of avoiding unemployment and poverty without sacrificing individual freedom. Although Professor Hansen regards a general shortage of demand as the most likely situation for the United States after the post-war boom has worked itself off,

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he does not confine his discussion exclusively to the problem of depressions. On the contrary, he points out repeatedly that the central problem of modern economic systems is the problem of stabilizing aggregate demand, and that policies which are appropriate for periods of depression may be applied in reverse when inflation threatens.

After a beginning chapter on the immediate problem of inflation, the author presents in Chapter II an eloquent plea for social and economic planning to avoid both inflation and unemployment. He points out that the conditions necessary to preserve economic opportunity and freedom today are quite different than they were a hundred years ago. His argument on this point seems to the present reviewer to be important enough to quote at length:

"By and large the right to establish a business or to acquire free land was adequate, in the nineteenth century, to maintain economic opportunity and to ensure the right to 'life, liberty, and the pursuit of happiness.' This is no longer the case. In all modern countries the trend in technology, whether in industry, transportation, or distribution, restricts economic opportunity, for the overwhelming majority, to the getting of a job—not to establishing a business of their own. If, therefore, we are to keep open the door of economic opportunity, under modern conditions, it becomes necessary for modern society to undertake as a primary responsibility the maintenance at all times of adequate employment opportunities. Just as the right to free land was the watchword of economic opportunity a hundred years ago, so the right to useful, remunerative, and regular employment is the symbol of economic opportunity today."¹

Thus Professor Hansen's thesis is that the urbanization of society, large-scale production, and the necessary interdependence of various forms of economic activity, have altered our social and economic environment so substantially, compared with the environment of the nineteenth century, that new policies are needed to preserve the social and economic and political freedoms which we have always enjoyed. Free private enterprise, while highly desirable, is not enough; in addition, the average worker must have some freedom in the choice of a job, which means that employment must be kept at a high level.

Professor Hansen's critics, who denounce his proposals for planning on the ground that they interfere with individual freedom, will do well to consider these introductory remarks carefully. There is not today, and there has never been in the past, any rigorous theory to justify the assumption that the economic system, if left to itself, will automatically tend toward a state of high and stable employment. Nor is there any economic justification for the view frequently expressed among some of Professor Hansen's critics that monopoly restrictions and other interferences with the free market are the

1. Pp. 15-6.

root of all evil, and that the economy will function smoothly at a high level of output if these restrictions and interferences are only removed. The plain fact is that if we are to achieve stability, prosperity and security we must plan for all of these things. Professor Hansen has shown how we can make these plans without interfering with our cherished liberties and opportunities.

This is not to deny, of course, that there are dangers in planning. Professor Hansen is as aware as anyone of the need to guard against the misuse of economic or political power, but he is aware too—much more than most of his critics seem to be—of the precipice upon which our way of life stands today. It is in the role of defender, not destroyer, of economic liberty and opportunity, that Professor Hansen makes his plea for economic planning to preserve full employment:

“If the democratic countries were not now planning and developing new institutional arrangements designed to make the market economy function more effectively than it did in the past, the future would be black indeed. Those who think that a reversion to the institutional arrangement of the nineteenth century would give us, in the world we live in, stability and prosperity are not realistic. They are nostalgic dreamers. They are fighting for a lost cause. We cannot meet the problems of today by institutions suitable to conditions that no longer exist. We need, and we are in fact devising, new plans both domestic and international.”²

Professor Hansen describes these new plans in the case of a number of countries having political institutions resembling our own. His book has chapters on the employment programs of Canada, the United Kingdom, Australia, and Sweden, in addition to a discussion of our own Employment Act of 1946. All of these plans have much in common. They all recongize the primary responsibility of the government for maintaining a stable level of effective demand, and they all propose various measures of government expenditure and tax reform to accomplish this aim. In contrast to the pre-war measures for sustaining employment, the present plans both in the United States and in other democratic countries place less emphasis on public works and more emphasis on measures to sustain the other components of demand such as consumption and private investment. The Swedish plan, in particular, emphasizes the fact that a simple attempt to fill the gap between actual demand and capacity by means of public works might involve too great a movement of workers between different occupations and different regions. Proposals are therefore made for stabilizing private demand, so far as possible, by means of tax adjustments, stockpiling, etc.

The first three parts of Professor Hansen's book are devoted to the subjects discussed above. In the fourth part, the author considers six basic policies for full employment: tax policies, interest-rate policies, wage policy,

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consumption, private investment, and public investment. With regard to tax policy, he points out that with a large federal budget, such as the present one, it is possible to consider a flexible tax rate as a means of offsetting fluctuations in demand. He favors an administratively-controlled basic income tax rate which could be moved up or down according to the general state of economic activity. He favors, in addition, some of the current proposals to provide incentive for risky investments, such as loss carry-forwards.

Professor Hansen believes that interest rates should be maintained substantially at the present levels. He does not consider a rise of interest rates an effective weapon against inflation, and, in general, he is opposed to flexible interest rates as a control mechanism.

With respect to wage policy, he emphasizes both the probable ineffectiveness of reducing wages in times of unemployment as a stimulus to output and the necessity to prevent wages from outrunning productivity in periods of prosperity.

Consumption expenditures, in Professor Hansen's view, can be increased and stabilized by means of various consumption subsidies. These would take the form of public health programs, low-cost housing, food subsidies for certain under-privileged groups, and more financial aid for education. In general, the measures proposed are designed to raise the minimum standard of living.

In his discussion of private investment, the author points out that the level of investment required to maintain a high level of employment may be larger than the amount required to provide capital equipment for a growing population and to put technological changes into use. If so, investment over and above the amount needed for growth would be wasted, and Professor Hansen would prefer, in place of this wasted investment, to fill the gap by means of higher consumption and higher public investment.

When he comes to the discussion of public investment, Professor Hansen returns to his well-known view that in a wealthy country such as ours many essential wants cannot be satisfied except by means of public expenditures. Many of these expenditures are thus justified, quite apart from their influence on employment, and in a growing economy one should normally expect to find public investment occupying an increasingly important position. The list of desirable projects includes "schools, hospitals, urban redevelopment, slum clearance, public housing, flood control, reforestation, soil-conservation projects, irrigation, hydro-electric power, regional resource development, harbor improvements, river transportation," and a considerable number of other items.

Part five of the book is devoted to a critique of certain rather specialized proposals for full employment, and in the final section (Part six) the author considers some of the problems of stability which are likely to arise once a full employment program is in operation. He believes that if a reasonable degree of stability can be achieved, both labor and management will behave in a rational and responsible manner. Management, on the one hand, will

acquiesce in a lower rate of profit if the prospects of depression losses are reduced; this will increase labor's share of income and help to maintain consumption. Labor, on the other hand, will recognize that stability depends upon wages not rising faster than productivity, and if the community as a whole assumes responsibility for avoiding unemployment, labor will have so much to gain from stability that it will take a broader view in its wage negotiations than has been true in the past. While Professor Hansen is optimistic concerning these problems of wages and prices, he recognizes, nevertheless, that the achievement of a high and stable level of employment will present us with new economic problems.

Professor Hansen describes his new book as a companion volume to his *Fiscal Policy and Business Cycles*. In a sense it is a reappraisal of some of his earlier proposals in the light of the present situation. If some of these proposals now seem orthodox and widely accepted, this is a measure of the progress during the last decade in developing practical and acceptable economic policy on the basis of the theory of employment. To no small extent, Professor Hansen is responsible for this progress.

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INTERPRETATIONS OF MODERN LEGAL PHILOSOPHIES. ESSAYS IN HONOR OF ROSCOE POUND. Edited with an Introduction by Paul Sayre. New York: Oxford University Press, 1947. Pp. 807. \$12.50.

THE genial metaphor with which Professor Kocourek introduces his contribution to the present collection of essays characterizes the jurist to whom it is dedicated as an Alpine peak appearing above the surrounding landscape of contemporary legal science and jurisprudence in this country. The metaphor, justified by the unique eminence which Roscoe Pound—for whom this volume was prepared for presentation on his seventy-fifth birthday—has occupied for a long generation in the esteem of the law school world and of the legal profession, vindicates in his case the kindly custom of publishing on an opportune occasion a memorial volume, representing the tribute of admiration to achievement. On this account, those responsible, and especially the editor, are to be congratulated, and particularly so for having produced so widely representative and interesting a collection of essays. In their variety and international *envergure*, they seem to typify the planes of the Alpine peak.

In this respect, quite apart from the intrinsic values of individual contributions, the volume affords a notable cross-section of current speculations in the world today about central problems of legal philosophy. In all, counting the editor's introduction, there are thirty-nine contributions, two specifically

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biographical, four with a primarily historical accent, five concerned with such eminently mundane matters as the administration of justice and the policies to be followed in governing Germany, and the twenty-eight remaining on theoretical topics of jurisprudence. Of these twenty-eight, two essays relate more or less specifically to aspects of Roscoe Pound's own philosophical contributions, four represent the "pure law" school, identified primarily with Hans Kelsen, four, with which two papers developing a severely "factual" approach to law may be grouped, exhibit the indelible imprint of Petrajitsky upon their authors; other essays exemplify analytical jurisprudence, comparative law, a psychological approach to law, as well as more general aspects of the uses of philosophy in law or even a suggested new species of "integrative" jurisprudence. Apparently, the interests of those invited to contribute are largely in legal theory; in this field, strangely enough, the issues that in this country have most attracted attention during the past twenty years are barely represented. Such views as those of the "realists," the "functionalists," the "behaviorists," and their ilk, are conspicuous in their absence. Presumably, this was not the intention; Judge Frank, who might have been expected to tilt a lance for "realism," instead exposes Blackstone, while the preface expresses regret that Walton Hamilton and Karl Llewellyn could not complete their invited contributions. Even with this exception, as a conspectus of matters that concern legal philosophers to day, this is a revealing volume—a worthy tribute to one who once wrote that "in the house of jurisprudence, there are many mansions."

Obviously, a miscellany so rich and variegated in content does not lend itself to review in any customary sense; the most that will be essayed in this place is a rapid and necessarily perfunctory catalogue of what it contains, in the hope that the reader may thereby be stimulated to investigate for himself. In this, the items to be enumerated may be classified more or less arbitrarily as (1) biographical, (2) historical, (3) practical, and (4) jurisprudential.

As indicated above, the volume includes two biographical contributions. First, the editor in a brief and sympathetic introduction advances, on the background of an illuminating vignette of Pound's career and a reasoned exposition of the eclectic "unity" and moderation of his philosophy, the suggestion that, since the philosophy of sociological jurisprudence was first announced in 1907, the drift of juristic thought, progressively emancipated from the dominance of historical and analytical jurisprudence, has been in the direction of a broadened relationship between technical law and the actual world in which human beings exist. Second, the extremely interesting and genuine tribute by Albert Kocourek, already noted, underlines the generous claim and fills in various details, lightly sketched in the introduction—the phenomenal memory, the indefatigable energy, the experiences as botanist, on the bench, and at the bar, which in part have formed Roscoe Pound; included is the moving introduction by John H. Wigmore to the celebrated St. Paul address of 1906. Referring to Pound as the "greatest figure in law

and jurisprudence in the English-speaking world" and "one of the most conservative juristic authorities of this era," Kocourek states that "his views on legal philosophy are syncretic; he is a traditionalist; an instrumentalist; a believer in the use of Reason and in the efficacy of Will; an opponent of social Darwinism; an 'antirealist'; and (we are convinced) a *Naturrechtslehrer* of the Ciceronian type."¹ This is a discriminating encomium.

The second group of distinctively historical contributions includes a careful study by J. W. Jones of Cino de Pistoia, poet and jurist, who formed a bridge between the Orleans school and Bartolus; an illustrative essay on the use of traditional terms for changing institutions by C. H. McIlwain; an instructive analysis of the transition in Tudor England from the medieval conception of a statute as custom to the modern view of conscious legislation by A. von Mehren; and a provocative monograph by Judge Frank in 73 pages on the problem presented by the influence of Blackstone's Commentaries in the United States. The last invites parenthetical comment. Here Blackstone is really blackened as a sycophantic apologist for a corrupt court, who falsely glorified the British constitution, ignored its underlying economic and social injustices, supported Lord North's anti-colonial policies, and perpetrated the notion of the judiciary as the mere oracle of an inadequately conceived natural law, all to support a pastoral picture of the Common Law system and to stifle real reform. The critique, if not novel, is stimulating and in view of its source intriguing; is this merely a scholarly assessment of an absorbing historical problem by its 'realist' author, or also an effort to demolish the Blackstone myth as a Trojan horse covering those traditional Tory principles which since 1765 have had undoubted vogue in American jurisprudence in certain quarters?

Among the third group of contributions, dealing with primarily practical themes, are to be found a most thoughtful discussion by the Australian Ambassador to the United States, Sir Frederic Eggleston, advocating a legal council to provide for a progressive and scientific codification of the Common Law and a realistic reexamination of legal procedure in which pre-trial resolution of questions of law and determination of matters of technical opinion by independent experts are specially recommended to reduce the cost and uncertainties of the judicial process. Max Rheinstein draws attention to the problem of regulating the courts as the watchmen of society; P. H. Winfield reports on the achievements of the English "Law Revision Committee"; Mitchell Franklin, envisaging current German theories of statutory interpretation, advocates ideological control of the German jurists as a necessary adjunct to "absolute occupation"; and Lord Wright, before the event, traces the conception of international criminal law, as founded in international custom, by which the Nuremberg trials have been justified.

Interesting as are the essays noted above, they form the minority in a volume that, as its title suggests, is primarily dedicated to legal philosophy.

1. P. 429.

Here is indeed rich jurisprudential variety. Elmér Balogh contributes a learned Note on Thomas Hobbes; Huntington Cairns an erudite discussion of Philosophy as Jurisprudence, which is to form the introduction to his eagerly awaited survey of law as viewed by the grand philosophers; Enrique Martínez Paz draws attention to Emil Lask's doctrine of legal science; H. C. Gutteridge outlines the province of comparative law, more fully covered in his recent work; Jerome Hall propounds "integrative jurisprudence" as a remedy for the ubiquitous fallacy of particularism in prevailing legal philosophies; Ranyard West outlines an approach to law as a means of extended self-control over aggressive instincts, in which specific account is taken of recent advances in psychology—a significant contribution.

Other essays in the volume dealing with legal philosophy may be more distinctly grouped. First, sociological jurisprudence is represented by Edwin W. Patterson's exposition of Pound's inventory of social interests as statements of policy-objectives for legislation and judicial decision, and by the extraordinarily compact sketch by Thomas A. Cowan of the "vast sweep of the history of jurisprudence from the Renaissance" to pragmatism where, it is said, Pound rests and beyond the mere relativity of which lies the conception of law as an experimental science of society. Second, the possibilities of analytical jurisprudence are exemplified in the incisive explorations of the definition of law, of the relations between law and fact, and of the fallacies of logical form in English law, by Arthur Goodhart, Max Radin, and Julius Stone, respectively.

Third, the most celebrated exponent of the "pure law" School of Vienna, Hans Kelsen, after indicating the various metamorphoses of the idea of justice, subjects to critical examination the representative rationalistic and metaphysical theories of justice of Aristotle and Plato, with the negative conclusion that the former ends in empty tautology, the latter in religious mysticism. This group also includes an important essay by Carlos Cossio making available an exposition in English of the so-called "egological" theory of law, in which the "pure" theory of law is applied to human conduct as particularly evidenced in adjudication, as well as a useful survey of the Vienna School by A. S. de Bustamante y Montoro and Helen Silving's analysis of the relative distinction between law and fact in the "pure" theory of law.

Fourth, of equal, if not even greater interest, since they discover an influential point of view not yet widely known in this country, are the references to the system of ideas of Petrajitsky. Of this philosophy, N. S. Timasheff contributes a brief but helpful critical summary supplemented by a brief outline of Petrajitsky's career and influence. Max M. Laserson and A. Meyendorff provide more extensive syntheses of the essential elements in this system of legal philosophy: the emphasis on the psychological foundations of law, the distinction between positive and "intuitive" law, the progressive, variable nature of the "intuitive" law, and the conception of jurisprudence as an objective science, having as its ultimate object the attainment of a better

law. And in incisive detail, Pitirim A. Sorokin sets forth the corresponding analysis of legal norms and specifically dissects the nature of the unofficial legal rules—the intuitive as distinguished from the official laws—and the central significance of law in sociological theory.

Fifth, in this connection, note should be taken of the two essays by Vilhelm Lundstedt and Karl Olivecrona, rejecting conventional legal theory as fictitious, in which the realities of law as "fact" are analyzed.

Finally, it remains to refer to what seems the keynote in this volume, the topic with which, counting the essays by Kelsen, Laserson, Lundstedt, and Lord Wright already noted, no less than one-fourth of the contributions are more or less explicitly concerned, namely, the axiological aspects of law. The first article in which Carleton Kemp Allen seeks to answer the Bentham reproach "What is Justice?" by the retort "What is Expediency?"; the analysis of natural law as an expression of perennial philosophical idealism and the impressive study on Vitoria's contribution to political thought as the founder of the Spanish natural law school by Anton-Hermann Chroust and Alfredo Mendizábal, respectively; Giorgio Del Vecchio's study on the moral and legal aspects of truth and untruth; William Ernest Hocking's diverting interview with the goddess of justice herself; the magnificent account by Werner Jaeger of justice as the central theme of Greek philosophy; and the important contribution to the theory of legal evaluation by Luis Recasens Siches—exemplify the present and perennial preoccupation of legal philosophy with the evaluation of legal phenomena in ultimate terms.

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A contemporary Dutch jurist, H. R. Kranenburg, in assessing the current posture of legal science, has drawn attention to the fact that, while there are no divergent physics or chemistries, since in these and other fields common bases of method and objectives have been found, discussions of the fundamental questions of law, in the absence of similar common ground, ultimately degenerate into assertions of the disputatious viewpoints of diverse schools of jurisprudence. This observation is substantially documented by the variety of viewpoints on legal theory illustrated by the contributions in the present volume. For this reason, since it is first necessary to establish positions, contemporary legal philosophy is so largely concerned with the preliminary problem of method. It is a battle of propaganda about what is assumed or ought to be true, more than a science devoted to the ascertainment of what is true.

Certain lines in this dialectic may be discerned with more or less confidence on the basis of the essays here assembled. One conclusion seems fairly clear, namely, that naked positivism—the supposition that enacted law has autonomous validity—is no longer tenable. The nearest thereto in the views here represented is the "pure" law theory, but this theory is formal hypothesis, a position which has been in effect abandoned in Cossio's version. If this conclusion is just, eclectic syncretism—the effort to resolve the theoretical

conflict by compromise—and the theory of interests must also go, since they are inadequate explanations of legal phenomena, being ultimately positivistic, the former in the curious sense of receiving disparate theories as validated facts, the latter since it measures the validity of interests by their legal recognition and in so far assumes the primary issue, namely, the inherent validity of the laws by which they are protected.

The major issue thus is to find the ultimate criterion of law, whether in the heaven of juristic ideals or in the earth of social reality. More bluntly, the real battle is between theoretical propaganda and scientific observation. On this critical issue, whatever may be thought of the recent accent on traditionalism in his writings, Roscoe Pound has made a major contribution to legal science in the United States; emphasis on the practical purposes and the creative perfectibility of law has been the fundamental and enduring note in his philosophy. And the present collection of essays, regarded as a sampling of current juristic thought, gives some encouragement to the belief that, however slow and tardy it be, the movement is toward wider understanding, first, that the positivistic explanations fail to appreciate the vital, variable, creative moment in law and, second, if less clearly, that the formalistic or idealistic interpretations are really irrelevant—that, indeed, both types, discounting the one the ideas that animate humanity and the other the actual conditions of human existence, almost inevitably become propaganda, since they so lend themselves to subornation as vehicles of national or class prejudices. In other words, we are advancing, let us hope, in the direction of agreement that the objective of jurisprudence is the same as of all science—to develop the truth. On this understanding, the fundamental positions of the “schools” of legal theory will merge, and the “house of jurisprudence” will become a house.

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SEEN FROM E. A.: THREE INTERNATIONAL EPISODES. By Herbert Feis. New York: Alfred A. Knopf, 1947. Pp. 313. \$2.75.

TECHNOLOGICAL progress and the results of World War II have callously combined to commit the United States to fullscale and unremitting participation in world politics, both inside and outside the United Nations institutions. Air transport and the Atomic Bomb, on the one hand, and the implications of representing one of two remaining Great Powers, on the other, make this commitment inescapable. There still is much nostalgia in retrospective contemplation of bygone days when isolationism was feasible, if perhaps unfortunate in its consequences; there is much impatience with the exacting role so suddenly thrust upon an unsuspecting nation; and to the detached

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observer, the United States may appear somewhat like the Reluctant Dragon of world politics. Yet isolationist leanings, impatience and reluctance notwithstanding, this actor can scarcely resign his part.

Beyond question, the immense resources which assigned to the United States this heavy responsibility are also essential means to its discharge. But there are gaps in the range of endowments required and one of these is inadequate understanding, in wider circles, of the intricacies of policy-making in the field of foreign affairs. This want of perception must in part be attributed to the failings of those on whom the public relies for information and counsel: the journalists, commentators, writers, educators and scholars. On the whole, they have not sufficiently elucidated the need for strategic perspective in the formation of foreign policy so that different policies are reasonably integrated in a consistent pattern, do not in effect conflict with each other, and do not deepen the impression abroad that American policy is unduly vacillating, ambiguous and contradictory. To analyze this problem and to appraise remedial possibilities, it is necessary to probe into such basic matters as the close interrelation of politics and economics, the interdependence of domestic and foreign problems, the importance of channelling vital information to the points where policy is made, the benefits and drawbacks of intra-and inter-departmental rivalry, the domestic implementation of foreign policies, and the complexities of party and pressure-group activities.

It is to an examination of such crucial problems that Mr. Feis has made a singular contribution. His book is not a systematic treatise. But in three case studies of what the author calls "international episodes," he gives a pithy account of American foreign policies in the making and furnishes the kind of revealing material upon the continued assembly of which more systematic observations must rest. As Economic Adviser in the State Department, Mr. Feis participated in the process of formulating the policies he discusses. This lends to his candid observations an uncommon degree of authenticity and puts him in a position to "speak out of school" when this helps him to make his points.

Mr. Feis' first case deals with the problem of assuring to the United States adequate rubber supplies in a world rapidly moving toward global war. In the author's own words, he presents "an analytical narrative of the effort made in the years before Pearl Harbor to secure rubber, of the circumstances and ideas that shaped that effort, the methods used, the difficulties met, and the results obtained."¹ It is a fascinating account of a few farsighted enthusiasts who, beginning in 1936, watched world rubber statistics as if they were an index of American security; of their uphill struggle for a government policy designed to supply the country with adequate emergency stocks; of the abortive attempt to pass the task on to the rubber manufacturing industry by exhortation; of the barter idea, swapping surplus farm commodities for rubber, which unsuspectedly received strong support by those

1. Pp. 4-5.

interested in maintaining high farm prices rather than in security; and of the gradually growing conviction that cash purchases directly by the government were the sole dependable program. There is an abundance of interesting problems: the lack of understanding between several government departments with regard to their respective responsibilities for the job on hand; the penurious opposition of the Federal Loan Administrator, unwilling to pay the price for security; the less stubborn resistance of the Secretary of State who viewed with equal distaste the method of government purchase and the war itself because they conflicted with the concepts and prospects of his Trade Agreements program; the foreign distrust of United States' motives; and the business-as-usual attitude of those in command of the international rubber control scheme.

The second case study is concerned with the attempt of the government, during the early 1940's, to formulate a policy with regard to Middle Eastern petroleum. The American oil companies with concessions in this region desired backing by their government in the event of political disturbances. They wanted to gain semi-official status for their concessions but did not wish to have their activities subjected to any form of government control. Opinion in the government was divided, with some quarters opposed to the assumption of inflexible obligations to protect private property abroad. But security and strategic concerns gradually prevailed over the voices of caution. As they had several times before in recent decades, gloomy prophecies of domestic oil reserves nearing exhaustion generated anxiety over assured access to ample supplies. Increasing interest in the Middle East as a world strategic region led some enthusiasts, hoping for naval and air bases in the area, to welcome this sudden interest in Arabian petroleum. The story unravelling in Mr. Feis' account describes successive efforts at reconciling the proposals of various government departments, of Congressional predilections, of the divided outlook of the oil industry, and of foreign interests. The bold idea of having American-owned oil properties in the Middle East purchased by the government, after prolonged discussion of the pros and cons, was approved by the President. The petroleum companies, however, refused to sell. Next, Mr. Ickes' project of a Middle Eastern pipeline system, built and maintained by the government, was withdrawn as the American oil companies engaged in domestic and Latin American production organized in opposition and secured widespread support by the press and in Congress. The third scheme of involving the government by an international pact led to the Anglo-American oil agreement of 1944—an agreement "daring in one way, timid in another, and obscure in general."² It also drew fire from the oil interests and from a Congress wary of bureaucratic designs on private industry, foreign entanglements, and "super-cartels." Again, as in the case of the emergency rubber policy, the author brings out clearly the multitude of conflicting interests and considerations, the cumbersome procedure of

2. P. 159.

bureaucratic machinery, and the bewildering sequence of strategic concepts and tactical moves.

The League plans for economic sanctions against Italy upon her invasion of Ethiopia and the future of collective security in a peaceless world is the third "episode" studied by Mr Feis. The most interesting part of the survey concerns the behavior of the American government during the crisis. "Washington was an important station in the circuit of indecision."³ The League was vitally interested in the prospective attitude of the United States. If economic sanctions were applied, would the United States render them futile by maintaining or expanding its trade with Italy (especially oil exports)? If the war should spread, would the United States be an indifferent and difficult neutral or a benevolent friend or ally? The United States government, however, was persistently noncommittal. The Executive was virtually paralyzed by the fear that any overt measure of encouragement to the League would strengthen the position of the isolationists. If any action at all, no matter how mild, could be taken by the government, it would have to be initiated independently of the League and, if possible, launched before Geneva dealt with the situation. The Secretary-General of the League was made to understand that the United States government would prefer not to be invited to participate in its discussion of sanctions or to be queried directly in regard to its prospective course. Under the guidance of the Senate, the nation finally took refuge in neutrality legislation designed to keep the country out of foreign squabbles.

These brief references cannot fully indicate the wealth of information and analytical insight to be found in this study. Mr. Feis set out to throw light on the diverse elements shaping American behavior: "economic conditions, popular dreams and fears, the self-seeking activities of organized groups, hues of faith and mistrust in our relationship with other countries, the nature of the individuals that held public office." His performance is admirable. If the book has any blemish, it is the author's sometimes unfortunate propensity to relish a purplish phrasing which a more sober stylist would shun.

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3. P. 218.

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