

continuing and flexible adjustment. Further imaginative developments in this area can be expected.

One should also realize that modern supra-state, sub-national problems are somewhat more involved than the old boundary disputes. Study, debate, and passage of time can be expected in the hammering out of an effective agreement which will serve the best interests of all concerned.

Mr. Thursby states that "the United States may become a party to a compact with one or more of its member States."¹⁴ Although there may be little available information on this point, present or future compact participants would undoubtedly like to see some informed speculation on the rights and duties of the United States as a party, and on the question of compact enforcement as against the Federal Government. Mr. Thursby shows that states may not unilaterally impair the contractual obligation of a compact by executive or legislative action. But, could Congress "reverse" an unfavorable court ruling by legislating the destruction of a compact to which the United States was a party?

This reviewer hopes for continued scholarly inquiry into the compact field, such as that conducted by Mr. Thursby. Certainly the compact device is no panacea, but it is definitely established as a vehicle of state cooperation which has the desirable attributes of lasting quality and federal blessing. It gives states having common problems the opportunity to combine to resolve them, either once and for all or under the direction of an agency established by the states. As the confidence of states grows with their ability to solve their problems by compact, so will the number and the ingenuity of the compacts they produce.

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THE FEDERAL LOYALTY-SECURITY PROGRAM. By Eleanor Bontecou. Ithaca: Cornell University Press, 1953. Pp. xi, 377. \$5.00.

UNDER the auspices of a grant from the Rockefeller Foundation to Cornell University, Miss Eleanor Bontecou has written an exhaustive study of the entire Federal Government's Loyalty-Security Program. I introduce her book in these words, since, in a way, they seem to give an apt idea of its content; and in conjunction with Miss Bontecou's own commendably frank statement that her study is not, and could not be an unbiased one, they also strike the keynote of her presentation.

Primarily, and in its best expression, the book is documentary. With meticulous and almost unerring accuracy, it traces the genesis, development, mechanism, purposes, and prognosticated results of the Program. It is replete with appendices, footnote references to court decisions as well as to Loyalty Board cases, articles, speeches, congressional reports, and most other available sources of information. The book traces the development of the program

14. P. 51.

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from the origin of the Dies Committee in 1938, throughout the period of Inter-Departmental committees, and the formulation of the controversial Attorney-General's "List" of subversive organizations. It continues through the experimental period of the Loyalty Review Board and its subsidiary agencies, and tells of their improved procedures up to the date of their demise. Only brief supplemental reference, which is so meager as not to permit of comparisons, is made to the program instituted by the Eisenhower Administration. Miss Bontecou leads the reader skillfully and accurately through the vast labyrinths of the program and the details of its application in the multitudinous departments of our Federal Government. To a research student, this volume might well serve as a thoroughly reliable textbook. I know of no other source in which so much pertinent information on the subject can be so readily obtained.

It is the author's interpretation of her information and the emphasis she places upon it, as well as the conclusions she draws therefrom, which provoke and highlight many controversial issues. Although perhaps, as Miss Bontecou concedes, one cannot write such a study on an entirely unbiased note, nevertheless, I am reluctantly forced to the conclusion that she is not particularly interested in doing so. The intimate alignment of the factual data with the conclusions drawn from them by Miss Bontecou seems to me only to emphasize the inescapable difficulties inherent in any and every sort of effective loyalty program.

Considerable space is devoted to an appraisal of the comparative merits of the two successive standards adopted in the United States to measure loyalty: the first, whether or not on all the evidence, reasonable grounds exist for belief that the person involved is disloyal; the second, whether or not there is reasonable doubt as to his or her loyalty. The author as well discusses at length the standard adopted in Great Britain, and favored by Miss Bontecou, namely, whether or not the person involved is known to be a member of the Communist Party, or to be associated with it in such a way as to raise legitimate doubts about his or her reliability in connection with work which is vital to the security of the State. Little or no consideration, however, is given to the fact that at best these standards merely express temporary shifts of emphasis. Each inevitably leaves the basic solution of the question of loyalty or security to be finally determined on the basis of all the evidence available to the particular tribunal applying the standard.

Following her appraisal of the standards, the author enlarges in great detail upon the customary and well-publicized objections to the program, including: (a) guilt by association; (b) refusal to disclose the names of confidential witnesses or to bring them to hearings; (c) lack of confrontation by or cross-examination of witnesses, and so forth. She fails, however, either to suggest or to explain the basic necessity for these aspects of the Program—namely, that to publish the names of confidential witnesses, accusers, or investigators and to subject them to cross-examination would not only render them useless as future sources of valuable information, but would lay them individually and collectively open to every conceivable form of retaliation. With respect

to the protest against "guilt by association," she also overlooks its best answer, stated by Mr. Justice Jackson in his concurring opinion in *American Communications Ass'n v. Douds*:¹

" 'Guilt by association' is an epithet frequently used and little explained, except that it is generally accompanied by another slogan, 'guilt is personal.' Of course it is; but general personal guilt may be incurred by joining a conspiracy. That act of association makes one responsible for the acts of others committed in pursuance of the association."

I believe that Miss Bontecou is on her best and strongest ground in asserting her objections to the Attorney-General's "List" of subversive organizations and its application to the adjudication of loyalty cases. Her position is doubtless well taken that the Attorney-General's "List" is mainly a matter of legislative fiat and at best was formulated in a rather hit or miss fashion without affording to the listed organizations their appropriate day in court for explanation or defense. Here again, however, she fails to explain any necessity for such a list, or the fact that it was meticulously compiled on the basis of information obtained through prolonged investigation by the Federal Bureau of Investigation, and hence is presumably a far more reliable guide than any corresponding information which might be obtained by some loyalty board for the purposes of a particular hearing.

Miss Bontecou, obviously not having had full access to the FBI reports, or to the data upon which the Attorney-General's "List" was compiled, assumes that much of the derogatory information is prima facie unreliable. By the same token, not having had an opportunity to read the rationale of certain loyalty decisions, she assumes that they are equally unreliable. In other words, the basis of her objections to the program must be attributed, at least in part, to the fact that she herself has had no opportunity to scrutinize the case records; and yet she assumes them to be either more or less erroneous. In calling attention to the absence of the "salt of common sense," she seems also to assume that loyalty board members, regardless of their broad experience and high reputation in their respective communities, have been capricious in their views, and unable properly to weigh or evaluate the evidence. After all, the professional man, the business man, the educator and the housewife, who comprise loyalty or security boards, may have quite varied notions of what constitutes loyalty, disloyalty, or security risk.

Perhaps the least effective portion of the volume is Miss Bontecou's treatment of the question of the constitutionality of the Program. She outlines with emphasis the usual arguments against its constitutionality, such as lack of due process, lack of confrontation by adverse witnesses, and absence of procedural safeguards, all of which have been the focal points of most briefs submitted on behalf of Government employees accused of disloyalty. After a discussion of the principal appellate court decisions on the constitutionality of Loyalty Board procedures, including that of the United States Supreme Court in the

1. 339 U.S. 382, 433 (1950).

Bailey case,² she concludes that "in few cases . . . has an opinion been delivered which can safely be treated as that of the Court."³ This, of course, is a contradiction in terms, since the decision of the majority is *the* decision of the Court, regardless of the nature or extent of dissenting opinions. She characterizes the Government's position as a demand that national security must outweigh claims of free speech and due process, and then attempts to extricate herself from the resulting dilemma by extensive quotations from dissenting opinions or majority decisions subsequently reversed by a higher court. Miss Bontecou would be much fairer to the reader if she stated frankly the simple fact that there has yet been no final decision declaring any portion of the Loyalty-Security Program to be unconstitutional other than the listing of subversive organizations by the Attorney-General without notice or hearing.

And finally, notwithstanding the unquestioned documentary value of this book, it is not light summer reading.

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CASES ON SECURITY, Vol. II, Suretyship. By Edgar N. Durfee. Indianapolis: The Bobbs-Merrill Company, 1953. Pp. xiii, 352. \$6.00.

THE size of this book represents the shrinking attention given to suretyship in American law schools. Arant's *Cases on Security* (1926), for example, contained 1074 pages while the book here reviewed has only 352 pages. The tendency to eliminate suretyship as a separate course and to combine it with other subjects under such captions as "Security," "Security Transactions," and "Credit Transactions" goes on apace. Professor Durfee has recognized this trend, and hedged against it by preparing his two-volume work entitled "Cases on Security," segregating suretyship in the second volume, so that the books may be used either in a combined or separate course.

The two volumes together cover the usual range of security transactions, including mortgages of real, personal, and intangible property, pledges, conditional sales, and trust receipts. The author has divided the two volumes by including all of these devices in Volume I, and by restricting Volume II generally to suretyship and "quasi-suretyship." All the transactions treated in the first volume are legal devices "by which the creditor is given some sort of hold on a particular thing—land, goods, or intangibles. In this respect suretyship is radically different. It gives the creditor no claim upon any particular thing, but a claim against a particular person. . . ."¹ The author calls the items covered in his Volume I "property security," and those in Volume II "personal security." Quasi-suretyship, included in Volume II, is defined by Professor Durfee as "things that are talked of as suretyship but don't involve credit-lending."² In this category he places transfers of mort-

2. *Bailey v. Richardson*, 341 U.S. 918 (1951) (per curiam).

3. P. 220.

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1. P. v.

2. *Ibid.*