REVIEWS


It should be said at the outset that Barnett's modest treatise on Patent Property and the Anti-Monopoly Laws is an unusual law book. In fact, "law" book may not be the right term, since it is really two books in one, the first dealing with "law"—the other with "propaganda." It might be called a "law and propaganda" book, but, of course, there is no precedent for that.

It is dangerous to speculate on such things, but one wonders how the book came to be organized as it is. The first 303 pages are, for the most part, a fairly restrained treatment of the principal cases in the field, about 200 all told. Here the author develops his main thesis that there is really no conflict between the patent laws and the Sherman Act; it is merely a matter of recognizing first that the patent grant is "property," conferring an "exclusive" and "beneficial" monopoly on the patent holder, and second, that it is only when the patentee has been guilty of "misuse of the patent grant" or of improper conduct "outside of the field secured by it," 1 that the anti-monopoly laws apply.

But when page 305 is reached, and from there for more than 300 pages to the end of the book, the author is upon a crusade to save the patent system. The Morton Salt, Sola Electric, and Hartford-Empire decisions, which came down in 1942 while the book was being prepared, are damned as "Revolutionary Decisions." From page 343 to page 354 the courts are given a lecture on the evils of "judicial legislation." Then follow two chapters, 16 and 18, devoted to Mr. Arnold's efforts to enforce the anti-trust laws and the measures proposed by the Department of Justice "to emasculate the patent system." These activities, the author says, are obviously the result of something more than "mere cloudy thinking"; they represent persistent agitation "trying to effectively destroy the patent system."

In Chapter 17, under the title "Other Menaces to the Patent System," the author pays his compliments to TNEC Monograph 31, "which appears completely blind to the essentials of the patent system." The writer of the report, it appears, had an "abysmal ignorance of the subject," and displayed "an unbelievable incapacity to understand what it is all about." The book concludes with some 200 or more pages consisting principally of reprinted reports and recent articles extolling the patent system. As the author says, "Fundamentally the American Patent System is sound."

On looking back over the first part of the book it is evident that no such sharp division between "law" and "polemics" can be made as just suggested; even there, it seems, the author is already waging his fight to save

1. P. viii.
the "patent system." A case in point is Chapter 8, which deals with the admitted proposition that a price fixing monopoly based on an invalid patent is illegal. To the suggestion that the Government should be permitted to show the fact of invalidity, however, the author stands "appalled by the prospect of endless litigation." The remedy, it seems, "would be far worse than the disease."

Having no other argument the author then goes into his usual routine, which is repeated with variations over and over again throughout the book: "too often do the authorities lose sight of the fundamental facts that a patent control is but temporary, that the entire unpatented field, which includes the field covered by expired patents, is always open to competitors, that the patented field can not operate to control any industry unless it offers to the public a cheaper or better product than can be produced in the unpatented field and that this is progressively so,—the patent owner must constantly strive to improve upon what is secured by his expiring patents if he is to continue to enjoy profits derived from his patent monopoly, by supplying the public with something newer, better, or cheaper than it has had before." 2

But a price fixing monopoly based on an invalid patent does not supply the public with something "newer, better or cheaper"; rather, it imposes a system of high prices for inferior products, and has no warrant for existence. It surely is not necessary to a defense of the patent system that invalid patents, also, should be defended. Needless to say the Supreme Court has never shown them any such solicitude. In a line of cases between private litigants reaching back at least to Slawson v. Grand Street Railroad 3—not cited by the author—the Court has, on its own motion, refused to sanction patents which in its opinion were void on their face for want of invention. It is scarcely conceivable that these cases will be reversed when the Government is plaintiff in an anti-trust proceeding.

Turning to the valid patent, however, what does the author mean by "patent control"? Essentially, of course, the term embraces two controversial points: the right to fix prices and the right to suppress unused patents. The author disposes of the first of these on page 116; he simply says without qualification that "a patent owner may lawfully impose a price control on the sale by his licensee of articles embodying the patented invention." And, since the patent holder may control the prices of one licensee, it is the author's thesis—though he does not say so on page 116—that he may license an entire industry and control its prices. That, in fact, is the "patent system."

Such, at least, is the author's contention. It surely should be obvious to him, however, that the members of an industry may well be moved to take out common licenses for two reasons: one, to obtain use of a given patent,
and, two, in order to bring themselves under price control. They are intelligent enough to know that, with the resulting elimination of price competition, both licensor and licensees may then increase their profits, irrespective of whether the patented article is "never, better or cheaper" than any other. Again, it should be pointed out that the Supreme Court has never sanctioned price fixing in such situations. The author, however, does not stress this point, if in fact he mentions it at all.

Consider next the so-called "right" to acquire and suppress competing patents, in order to control an industry. Barnett would defend this to the death; it is the heart of the "patent system," one gathers. The argument is taken up on line 11 of the preface, if not in the title of the book, and continues throughout: "a patent is property which, like all other property, gives to its owner exclusive control of its use." Next, on page 376, "as his patent, to be valid, must relate to something previously unknown, the patent takes nothing from the public domain and imposes no obligations or conditions upon the patentee." Wherefore, it follows: "He may completely suppress the invention until his patent expires or he may permit its use on such lawful terms as he may specify."

Such is the foundation of the patentee's "right" to buy up and suppress competing patents. Of course the basic question has nothing to do with whether a patent is property. Nor does it make any difference logically that the patent represents a new discovery, not previously known to the public. Grant both propositions, for purposes of argument, and still you face the question: by what right may a patent holder buy up one or more competing patents in order to give a clear monopoly to his own business, based on another patent? There is nothing in the patent grant, most certainly, nor in the patent statutes, which suggests that such conduct is legal.

To make the point very clear, suppose that separate competing businesses were based on two competing patents. By buying up the businesses, and incidentally the patents, the purchaser would, under the Standard Oil case and a long line of decisions, have acquired an illegal monopoly. And it would have been no defense to say that such "businesses" were "property." Why is it any less illegal if one buys only the patents on which such businesses were, or might be, founded and suppresses them? The author's answer, that the patent is private property, is of course no answer at all.

Thus it would seem that the writer of TNEC Monograph 31 was not really "abysmally ignorant" when he condemned the modern practice of using the patent monopoly "as a device to control whole industries, to suppress competition, to restrict output, to enhance prices, to suppress inventions, and to discourage inventiveness. . . ." 4 Mr. Barnett simply chooses to ignore these facts and to confuse the issue, first with some irrelevant propositions about the inventor's contribution to our economy, which is admitted, and second, with a defense of the so-called "patent system."

Actually, one gathers that Mr. Arnold and the writer of the TNEC monograph understand the "system" fairly well. Whether or not Mr. Barnett does may be questioned; he seems to live—or at least to write—in a sort of dream world.

The key to Barnett's whole book may be found in a single case, *Rubber Tire Wheel Company v. Milwaukee Rubber Works*, which he cites whenever hard pressed. No other "authority" sustains his full thesis that the "patent grant" is very broad indeed. But, unfortunately, that case has long since been discredited. It was decided in 1906-07; it cited no prior anti-trust authority; it has been repudiated in the circuit in which it was decided; and, it appears never to have been mentioned, much less mentioned with approval, in the Supreme Court.

Worse, the case was founded on a course of reasoning which is demonstrably false. The argument is that a patent is property; it can be used or not as the patent holder chooses; wherefore, if he decides to grant a license, he may do so on such terms and conditions as he sees fit, short of perpetrating "arson or murder." One wonders why Barnett at no time, when citing the *Rubber Tire Wheel* case, saw fit to acquaint his readers with the Supreme Court's unqualified condemnation in the *Motion Picture Patents* case of the course of reasoning on which the *Rubber Tire Wheel* case was decided. To fail to do so, though perhaps permissible in a "propaganda" book, is most unusual in a "law" book.

ROSCOE STEFFEN†

---

† Professor of Law, Yale Law School.
ment which prevailed in the early 1930s. Unless we achieve economic security, our political freedom, our democratic system, and the peace will be in jeopardy. Our problem is how to assure economic security and full employment in ways which preserve and enlarge the substance of our political and social freedom. It is with the problem of economic security that the two books under review deal.

A proper appraisal of the relationship between the economic and political powers of government and the economic and political powers of private enterprise has too often been obscured in our thinking by newspaper headlines which have dramatized the struggle for power between business, labor, agriculture, and government. In addition, during the interlude of a war which has produced full employment we have to a large extent indulged ourselves in an escapist psychology by pretending either that the problem of economic security does not exist or by postponing the day when we stand ready to come to grips with it. But as with all such excursions into a dream world we have a conscious or unconscious feeling that there will be a day of reckoning—in this case with consequences which may be far-reaching as well as unforeseeable. It is high time that we face the problem as Beardsley Ruml, a New York businessman, and Professor Hutt of the University of South Africa have attempted to do.

Most Americans believe that the survival of private enterprise will best assure democracy. They fear that a drastic shift of economic power from private individuals and corporations to government will mean the loss of their political freedom. At the same time, they have some doubts as to whether private enterprise can provide under modern economic conditions a continual high standard of living and full employment. They know that political freedom will be endangered unless there are jobs and economic security for all.

We all know now, as the technocrats properly pointed out during the depths of the great depression, that we have the productive means at hand to create a standard of living for all Americans which is unsurpassed in history. We need only look to our experience in the midst of our war against the mightiest military machines in history. With eleven million of our most productive workers in the armed forces and with nearly 50 per cent of our productive effort devoted to the war, our civilian population consumed a greater total value of goods and services than in any peace-time year!

It is now generally agreed that the problem of full employment and production in peace-time is how our tremendous capacity can be kept fully utilized so as to assure a constant increase in the standard of living, and how the flow of national income can be maintained and increased through the pocketbooks and bank accounts of individuals, industrial corporations, and financial institutions. During the war our government, with an unlimited check book and the authority to forbid and to require production, has been able to buy and to stimulate the production of all the supplies we could produce and the services we could provide. No fiscal or monetary barriers,
no monopolistic controls have hindered full employment and production. But unfortunately our individual citizen is not in the happy situation of having an unlimited check book nor can he, as an individual, overcome the monopolistic controls which restrict production. What is the nature of the problem and what is the answer?

Ruml, in *Tomorrow's Business*, states the fiscal aspects of the problem generally in accordance with the widely accepted analysis of Lord Keynes: "These ups and downs of business activity—seasonal, episodic, and cyclical—could probably be compensated for by monetary and budget policy to a considerable degree, and without too much trouble, if it were not for another difficulty about purchasing power. This difficulty arises from the fact that purchasing power tends to cool off, to come to rest. This tendency results from the inevitable passage of purchasing power from the hands of the economically weak, from people who must spend all they receive, into the hands of the strong, to people who may retain some portion of it, however small, for longer or shorter periods of time. The quantity of purchasing power, the amount of circulating medium—bank deposits, currency, and coin—existing at a certain point of time, will tend to diminish as effective purchasing demand in the day, or month, or year following. It will tend to diminish as a consequence of the internal necessities of its movement from weak hands to strong."

The fact that individuals or corporations do not spend or invest their entire income occurs for a variety of reasons—the major one being that the particular recipients do not require all of their income to satisfy their consumption needs or do not see prospects of a sufficient profit to warrant the risks involved in investing their money to create additional goods and services. What should business, what should government do about these savings?

Ruml has two suggestions to meet this problem; the first based on inculcating business with a greater sense of social responsibility, the second on increasing the prospects of higher profits through a revised fiscal policy of the government. Ruml recognizes that great powers reside in private enterprise over the economic life of the people and he seeks to encourage the voluntary acceptance by business of internal reform so that it will exercise its control over our economy in the national interest. He is fully aware that business, as well as government and labor, for example, controls certain areas of our economic life. He suggests that business should recognize its responsibilities to the different elements of our economic society.

Ruml does not specify how these responsibilities should be translated into action other than that business should include on its boards of directors individuals who would act as spokesmen for each of the different interests with which business is concerned—labor, consumer, etc. These spokesmen would not be representative of the interests for which they would be advocates but would be individuals who were familiar with the problems of a particular group. Their function would be educational and informative and
their powers would be through persuasion rather than their numerical strength on a board of directors. What such a board of directors might be expected to do to meet the fiscal problem Ruml poses is something of a question. We can hazard a guess, however, that the new boards might create a business policy of full production and low prices for the consumer; higher wages and better working conditions for the worker; higher dividends for the stockholders; and bigger purchases and greater investments for those other businesses to whom payments are made. But it is not clear how, apart from a policy of greater dividends rather than one of accumulating savings, business management could properly justify adopting such policies when its immediate responsibilities are to its owners rather than to the public at large.

As Ruml sees it the government's role in creating full employment is to stabilize the value of the dollar, to balance the budget at full employment levels and to eliminate or greatly reduce corporate and sales taxes which have the effect of limiting the prospect of profit or of reducing purchasing power. Included in Ruml's suggestions for revising corporate taxes is a proposal for an undistributed profits tax with modifications to meet his criticism of this tax as adopted in 1936 (later repealed). This tax would tend to minimize the problem of corporate under investment and to some degree effect a redistribution of income into the hands of those who would spend or invest. But in part also it would transfer the problem of under-investment from corporations to individuals who might not need or would not use this income for expenditure or investment.

How the slack is to be taken up is not clear. Although Ruml says, "it is now generally recognized that the national budget must be called on to support purchasing power on the down side of the business cycle," he proposes no measure in the event that full employment is not attained through tax reduction or through business acceptance of the broader responsibilities which he feels should be assumed. He further says that "we want no spending for its own sake, and no projects merely because they support purchasing power in general." He specifically discards government expenditure through public works as a means of compensating the downward tendency of the national income and he does not advocate it as a recurring means of achieving or maintaining full employment except for the purpose of stabilizing the construction industry.

Clearly this program does not involve any shift of economic powers to government which endangers our democratic institutions. But will it provide economic security? It is difficult for anyone familiar with the psychology of businessmen even in the midst of war to believe that the point of view he proposes would be acceptable to business in the peace to come. It involves the clear prospect of sacrificing immediate profits in what may be termed the public interest—when it is the guiding rule of business to maximize its profits. It involves a conception of business responsibility which is as radical in its way as the institution of new and far-reaching govern-
mental controls. And it depends for its success upon action which would run contrary to established legal and time honored responsibilities for making, by all legitimate means, the greatest profits possible.

It is true—although Ruml does not state it as a bargain—that reductions would be made in taxes—a proposal always popular with business. The theory is that the prospect of higher profits—even after business carries out its newly assumed responsibilities—will be an incentive to investment. But throughout the 1930s we had savings which were not invested, and the tax structure during that period was, generally speaking, at levels as low as Ruml now proposes. The lack of a bogey-man in high taxes did not seem to answer the question then and no reason is advanced why low taxes will solve the problem now. The very effect of the tax reductions—if they increase business profits—will be to enlarge the problem of an outlet for their expenditure and investment. When our industrial capacity after reconversion can provide roughly twice the goods and services we now consume, is there reasonable likelihood that the volume of investment will tend to diminish less than it has in the past? What factors or institutions will there be to see to it that the flow of investment funds continues to be spent without interruption?

Ruml clearly sees the fiscal problem of recurring under investment, but he proposes no fundamental solution which might control its causes or effectively compensate against it. In addition he shares the error of many economists who, concentrating on the fiscal side of our economy, attach little significance to the monopolistic practices which impede full production and employment. It is evident, however, that he feels the handwriting is on the wall for business if it does not adopt a new conception of its social and economic responsibilities. His book is an appeal to business to save the private enterprise system by acting in the public interest rather than in its own selfish interest. But he does not concede what is unfortunately obvious—that what may be in the interest of business as a whole is not necessarily in the interest of a particular business concern.

Francis P. Hutt, in his book *Plan for Reconstruction*, suggests a different approach to the problem of economic security. He rejects the notion that our economic problems can be solved primarily through fiscal measures. It is not possible, he says, to achieve a full production and employment economy “by any economic conjuring trick with monetary policy or sound spending.” He sees our economic problem as caused primarily by lack of free competition due, as he puts it, to the restrictionist mentality of labor unions and business.

Hutt’s thinking stems from the premise that capital and labor alike are dominated by monopolistic thinking since monopoly offers to any particular group of individuals the greatest prospect of high profits and high wages, which are the objectives of private enterprise. He sees an inevitable tendency towards restrictionism and no prospect of truly free competition without extensive governmental controls. In his view, a free competitive economy
REVIEWS

is the only one which can assure a rising standard of living and full employment in a democratic society.

Although Hutt has no faith in the ability of private enterprise to reform itself, he does not suggest socialism in the sense that government should take over the ownership and operation of the entire business life of the nation. He would, for the most part, retain private business as the custodian of our economic mechanisms. But it would operate under a system of governmental regulations designed to force full production, full protection for the consumer, and full employment. Profits would not be the incentive medium for achieving this result. Indeed, I cannot recall that profits as such have any place in the admittedly revolutionary economic society which he proposes.

Behind the complex regulatory instrumentalities and devices he proposes is the power of the government to take over or direct the disposition by sale or lease to others of any enterprise which it believes is not making maximum use of its facilities and resources in the public interest. Virtually, complete economic power has been shifted from private hands to the government. Where Ruml shies from governmental coercion over the economic life of a nation, Hutt insists upon its necessity.

Hutt has three proposals which constitute his "Plan for Reconstruction" and they are presented in the form of three bills. He first proposes an elaborate and complicated system of guaranteed incomes to those employees and professional workers whose incomes are not derived from investment. The minimum annual income guaranteed would be based on the particular individual’s past earning record and his prospects for the future, including diminishing earning power in later life, except in the case of professional workers. Adjustments would be made from time to time in accordance with changes in price levels and the cost of living.

This guarantee system would be administered by trustees elected by individuals eligible to receive grants from a "Labor Security Fund," the income of which would be derived from a uniform tax on each individual’s income to be levied at the source. The amount of the grant would be the difference between an individual’s actual income and any greater amount that might constitute his guaranteed income. The payment of these grants would be conditioned upon the acceptance by the recipient of conditions specified by the trustees. He would have to work where he was told at the job assigned to him for whatever wages were being paid and for whatever hours might be specified, and to undergo such vocational training as might be directed. Under this arrangement an individual would be free to secure higher wages if he could or to enter any employment that he wished, but to qualify for a grant he would have to surrender his freedom of choice for the economic security offered by the Plan. In addition, the normal functions of labor unions with regard to wages and hours and conditions of employment,

1. Hutt does not regard this levy as a tax, but as a system of compulsory income pooling with a redistribution of earnings.
which are regarded as impediments to the competitive laws of supply and demand, would be abolished, including the right to strike.\(^2\) Wages would rise or fall in accordance with free competition. But the benefits of all wage cuts would be passed on to consumers through a system of maximum price controls, to be administered by a Resources Utilization Commission.

Hutt's second proposal is to guarantee the income of those individuals whose income is derived not from wages, salaries, or fees, but from investment. Grants would be payable on the basis of the earning record and future earning prospects of the properties or securities owned by any particular individual. But grants would only be payable when the cause of diminished income resulted from the action of the Resources Utilization Commission in its efforts to establish a truly competitive economic society. Appropriate adjustments would be made in the amount of the grants to take account of changes in price levels and the cost of living. These grants would be administered by a second group of trustees elected by individuals eligible for grants from a fund known as the "Capital Security Fund," the income of which would be derived from a uniform tax on investment income to be levied at the source. As a condition, however, of his right to receive a grant, an individual may transfer his property or securities only with the approval of the trustees and the trustees may exercise all of the rights of a security holder with respect to all investment property owned by the recipient of the grant. This power of the trustees would be utilized to assure full production under competitive conditions.

Hutt would not discourage investment as such, but he would urge that investment holdings be spread as broadly as possible throughout the entire range of private enterprise. As he sagely points out, losses in a healthy economic society would then be slight if not impossible. Investors who did not follow this policy would be required to bear the consequence of any losses they might incur. The extension of the investment trust would seem to be an essential part of this aspect of his proposal.

This part of Hutt's plan would be temporary, to last only during the lifetime of the individual recipient of investment income or, in special cases, of his immediate heirs. It would be anticipated that at the end of roughly a generation businesses founded upon monopolistic practices would be liquidated. As this portion of the program is not designed to be a permanent feature of the new economic order, it is not intended to afford permanent security for capital but rather to provide an easy means of transition during the period of adjustment until true competition is achieved.

Hutt's third proposal involves the establishment of a Resources Utilization Commission which would constitute an economic high command with ultimate responsibility for determining when monopolistic conditions existed
and what action would be appropriate to assure competition and the full utilization of existing resources. The Commission would consist of three judges, three economists, and three businessmen familiar with trade, industry, and production. They would be appointed by the president of the British Board of Trade and the members would have permanent tenure.

Hutt regards the Federal Trade Commission Act and the anti-trust laws of the United States as his point of departure, but he concludes that the courts are not an appropriate body to interpret the laws as they exist and that the enforcement powers they confer are not adequate to assure free and open competition.

Both as an enforcement arm of the Commission and as an affirmative means of assuring full utilization of resources, a State Trading Board would be established to form a series of government-owned corporations which would engage in business for the purpose of supplying demands which private enterprise refuses to supply and to assure through state competition that private enterprise is operating competitively. These corporations would be financed from appropriated funds and the capital invested could not exceed 20 per cent of the value of the private capital invested in the particular industry which the state corporation was going to enter, with the exception of public utilities. In addition, the State Trading Board would administer any properties which were expropriated by the Resources Utilization Commission. All enterprises operated by the State Trading Board would be required to operate under the same conditions as private enterprise, including the payment of taxes. They would enjoy no special privileges except when establishing a new business. To assure that the State Trading Board does not fall into monopolistic practices as a result of a desire to make profits, the Commission would be required to determine the minimum output to be required from any state-owned corporation.

In addition to its functions with respect to state-owned corporations, the Resources Utilization Commission would serve as a quasi-judicial instrumentality in the administration of a greatly extended anti-trust and fair trade legal system. It also is authorized to certify the quality of goods sold to consumers and to force disclosure by private enterprise as to the constituency of a particular product. It would be empowered to void contracts which fix prices or wage rates collusively to limit output. Price discrimination is carefully defined so as to cover almost any conceivable case where prices reflect more than actual cost factors—and where costs are the result of uneconomic operation, provision is made for their elimination. The Commission would be empowered to enforce standardization or amalgamation where, in the opinion of the Commission, economies would result, and it could suspend industrial legislation which, it believes, unjustifiably adds to the cost of production.

Under this proposal no corporation could acquire an interest in a competing corporation, and a director or shareholder could not own more than 5 per cent of the capital of a competitive corporation. Where the Commission
determined that the owners of a particular enterprise without collusion with their competitors were withholding capacity from production, it could reduce shareholders' dividends and the salaries of management; it could require the owner to increase production or it could direct the sale or leasing of such property and, as indicated above, it may expropriate the property.

- The basic ideas of guaranteed incomes and free competition are not concepts with which many would quarrel. It may well be asked, however, whether the price paid for economic security under Hutt's proposals is not too high and whether the concentration of economic power in the hands of government is not too great? And perhaps as important as the social and political implications of the Plan is the administrative complexity of such a system. The Plan might well break down on this point alone.

We may appropriately question whether the economic insecurity with which we may be faced under Ruml's proposals may not endanger the political freedom which he strives so diligently to preserve. Hutt on the other hand—assuming the administrative and fiscal feasibility of his proposals—may well have achieved economic security at the cost of our political freedom. Neither of these results would seem satisfactory to the American people.

If we are not to solve our problem of economic security by drastic state controls, it seems clear that we must offer something more than the prospect of high profits and an appeal to business to discard its ancient and time honored habit of acting in its own selfish interest. If we are to retain our political freedom, it would also seem that we must offer more than the form of private enterprise and the substance of virtually complete state control.

When we have reconverted from war-time to peace-time production we cannot be assured that we shall enjoy the fruits of our potential resources if we continue to amass savings which are unspent or uninvested and if we fail to utilize the resources at our disposal. Deficit spending is one answer to the problem of underinvestment. It is certainly not the only answer nor necessarily the best answer. But in the light of our investment and lack of investment experience can we look in the future to high profits alone as an incentive for keeping our economic machine going? Will not measures necessarily be taken, such as higher rather than lower taxes with respect to the groups which have demonstrated their incapacity to utilize either by spending or investment their entire incomes; and will not more stringent enforcement and broadening of the anti-trust laws be necessary for the elimination of monopolistic practices which stand as a barrier to free competition?

How we can achieve economic security and at the same time preserve the private enterprise system under which political freedom has grown and flourished remains, together with keeping the peace, the major problem of our time.

Democracy has had its setbacks, as well as its periods of development. We have had recurrent wars and recurrent depressions throughout the history of the world. We have come through the major ordeal of the latest
world war. Once again we are taking steps to prevent another world catastrophe for we are more than ever aware that if we do not succeed in this effort, democracy may not survive. We should be equally aware of the threat to our way of life from economic chaos. This threat, though it be from within, can be as great as any threat from abroad and it is not so easily recognizable. After the great depression of the early 1930s we took some of the first steps required to provide economic security through social security and other laws. Those steps were merely a beginning. If, even before unemployment, suffering and all of its attendant risks of social and political upheaval once again are upon us, we are able to agree upon the measures necessary to our economic security within the framework of our fundamental institutions, we shall have not only solved a major problem of our time but demonstrated that we can learn more from history than history itself has taught.

Alfred E. Davidson†


This is an appeal to reason, written in the language of the layman, urging nations to cease their economic warfare and to form unions by which trade barriers can be lowered and economic processes developed to the advantage of all members of the union. The author is doubtful of the efficacy and practicality of political arrangements for maintaining peace, but sees in the nations’ economic interests a parallel goal to harmony and a realizable method of coordinating their interests, requiring but a modicum of political understanding. It is a question how much of such understanding will be left after the present holocaust. But no one can gainsay the value of coordinating economic interests which of necessity transcend national boundaries.

The methods Mr. Mallery suggests are based on an expansion of the Hull reciprocal trade agreements into what he calls the promotional trade agreement among two or more nations. He would later have these expand to obtain the adherence of additional nations. His Board of Managers, based on the experience of the International Labor Organization, would consist of national representatives of employers and employees and of the public. He promotes the possibility of national acceptance by confining the Board's conclusions to recommendations solely for the consideration of the participating nations. The bank which he foresees has now been realized by the proposed Bank for Development and Reconstruction conceived at Bretton Woods. He points out how colonial systems have operated to favor the home country and considers this inconsistent with the “equal access” which

† Member of New York bar; General Counsel, Foreign Economic Administration.
peaceful development requires. The enforcement of international fair trade practices which he advocates is illustrated by the recent United States tin agreement with Bolivia contemplating a price conditioned upon certain advantages and security for the tin worker in Bolivia. It must be conceded that such an agreement is facilitated by the Bolivian tin monopoly and by the fact that only one power is the consumer.

Mr. Mallery would also regulate international cartels first by publicity and then by price control. Every State, he asserts, possesses the means for protecting the public against imposition. He would have depressions countered by joint international action instead of the current recourse to national protective measures bound to affect other nations disadvantageously. Finally, he would have the principles of economic union coordinated by a world trade board which might join several economic unions in one organization.

There seems little doubt that the unfair competition which symbolizes international relations finds one of its notable manifestations in the economic field. There also is little doubt that sensible cooperation in this field would neutralize much political hostility and promote the interests of all participants. The question which observers will ask is whether the political arrangements about to be made will be sensible enough to permit of this economic development. The problem is universally recognized and efforts to meet it have not been infrequent. The author’s proposals warrant most earnest consideration.

EDWIN BORCHARD†


JUDGE SHIENTAG begins the lecture which is printed in this little book, the third of the Benjamin N. Cardozo lectures delivered before the Association of the Bar of the City of New York, with the statement that the theme has long intrigued him. That will cause no surprise to those who have enjoyed his essays which, from time to time, have appeared in various periodicals, and several of which have been gathered in a volume entitled Moulders of Legal Thought. Rather, the surprise will be that he has been able to keep so closely within the bounds of the subject he has chosen. “As a man thinks, so is he” has much truth when applied to one at the basis of whose calling lies the need of the continual exercise of his intellectual faculties. The judicial process is but the endeavor of the judge to reach a reasoned solution of the problems before him by the application of accepted or developing rules of conduct to particular facts. Some one has said that the com-

† Justus S. Hotchkiss Professor of Law, Yale Law School.
mon law is essentially a manner of thinking. These larger fields Judge Shientag has in the main chosen to leave without the scope of his thesis. He keeps quite closely to the theme of the personal characteristics a judge should have, and he says that there are three elements of personality, closely related but distinguishable: temperament, intelligence and character. He has chosen for discussion eight cardinal virtues which the judge should possess and which for the most part fall within the first and third of these elements: independence; courtesy and patience; dignity, including the judge's sense of humor; open-mindedness; impartiality; thoroughness and decisiveness; the understanding heart; and social consciousness.

It would be a disservice to Judge Shientag and to those who will want, and—a much larger group—those who ought, to read this essay, to attempt to summarize what he says. He discusses each of the virtues he has chosen with clarity of thought and lucidity of expression. He strengthens his argument with many quotations from and references to the writings of those who, directly or indirectly, shed light on a particular matter he is discussing, and he brightens and vivifies his text with apt illustrations. The task of the reviewer should be, rather, by embroidering his text, to stir others not merely to a reading but to a thoughtful consideration of his all too brief dissertation.

First, then, to quarrel a bit with him: In his discussion of impartiality, he criticizes severely judicial rationalization. Undoubtedly there is a type of rationalization which deserves the censure he passes upon it. Most judicial decisions, if there is to be even a modicum of certainty in the law, should be reached first by a fair and impartial determination of the facts, and then by applying to those facts the accepted principles of law. Any judge who, because he may think that this process will not bring about the result which, a priori, he feels will do justice, first reaches his conclusion and then seeks to justify that result by distortion of facts or specious reasoning, deserves condemnation. But it is at least arguable that the development of the law has very largely come about by a process of rationalization. A judge finds himself confronted with a situation where, if he applies to the facts he finds proved the principles of law established by prior decisions, a result will be reached which plainly will not do justice between the parties nor serve the best interests of the social order. Faced with that situation, he studies those principles, he seeks to learn the purpose they were designed to serve, and he tests them by the changed conceptions of the time in which he lives; and he finally concludes that the scope of old principles must be narrowed, or perhaps even discarded, or that they must be given a broader concept. Thus he moulds the law to accomplish the end which he has begun by believing he ought to reach.

It is not easy to draw the line between rationalization which lies at the root of the law's development, and that rationalization which Judge Shientag well says amounts to "judicial hypocrisy or even to intellectual dishonesty." No doubt the test lies in those last two words. If the judge, after careful
study and honest consideration, believes that the existing principles should be modified to meet the situation before him, it is his duty to mould them to serve the sound purposes of judicial administration; but if he seeks to reach his before-determined conclusion by any method short of that, undoubtedly he deserves to be censured.

This leads to another thought which lurked in the mind of this reader as he closed the book, the implication, rather than the statement, that the ideal judge should always aim at doing justice between the litigants before him. In the face of the many and great legal philosophers who have pointed to such justice as the end of law, one should hesitate to query that conception of the ultimate purpose of judicial administration. But the question, what is justice?, is as searching and unanswerable as Pilate's inquiry, "What is truth?" Only the Infinite can weigh all the circumstances, all the motivations, all the influences upon the bases of which the requirements of justice could be met in the individual case. So long as law is a body of rules made by men to govern the conduct of men, all the judge can do is, by the honest and fair application of those rules, to reach the decision of the controversy before him. The clerk, long since gone to his reward, who, in my early days upon the bench, used to ask me when I handed him a decision, "Have you done justice so far as the law permits?," sensed this fact. All conscientious judges have writhed under the necessity of reaching decisions contrary to their convictions as to the needs of justice in a particular controversy. At best, the judge only roughly approximates just decisions, and if the elaborate and expensive judicial machinery were to find its raison d'être in its accomplishments in that respect, its justification would be doubtful. That justification lies, I think, in large part in this: in any society controversies will arise between its members; in some way, if a well-ordered society is to exist, these controversies must be settled; the decisions must be made by some authority. In civilization's early dawn they were made by the leader of the group, today they are made by the courts. It is to the glory of the great mass of men, that if they feel that their differences with their fellows have been fully heard and fairly determined in accordance with accepted rules, they will accept that decision without the strife which otherwise would unsettle the order of our living.

This is a long exordium to a much briefer comment. Judge Shientag suggests that other virtues may be added to those he has selected. Among these additional ones, I would list first that the ideal judge should have a definite philosophy of the law, an understanding of the deeper purposes he is serving. He would thereby appreciate the better that he is a public servant; no more immune to honest, fair and reasonably well grounded criticism than any other public servant. He would thereby be humbler, but, at the same time, he could take comfort when he found himself compelled to make decisions contrary to his convictions as to the requirements of real justice in a particular case. In particular, there is peculiar need for a philosophy of the law on the part of the judge called upon to determine criminal cases. In
dealing with them, he should have not only an understanding heart and a
social consciousness, but he should appreciate the nature of so-called crime,
the purposes of the punishment of the transgressor, and the effect of the
means he has at hand to attempt to serve those purposes.

Is there better recommendation for this book than that it has stirred one
reader to embark upon thoughts like these?

Wm. M. MALTBIET

POLITICS AND MORALS. By Benedetto Croce. New York: Philosophical
Library, 1945. Pp. 204. $3.00.

These are bewildering times. Yet, some retain sensitivity. We have
remained or become more concerned with morality or the lack of it in politics.
But we look in vain to this book for guidance; for, if morality connotes prin-
ciples guiding the course of an individual’s or group’s action in a given
situation, whether these principles be in the form of dogmatic rules of con-
duct vigorously asserted or in the form of a useful method for thinking about
what to do, this book does not speak of morality. And if by politics is meant
some form of organized group action, whether by the group known as the
government, or by others known as corporations or trade unions, and if
politics is concerned with the relation of individual actions to such group
action, this book does not deal with politics. It only seems to do so. It dis-
cusses the philosophies of Machiavelli and Vico, Rousseau, Hegel and
Haller, and deals with the bourgeoisie, free enterprise, the struggle between
State and Church, and international peace. The reader views a galaxy of
concepts that bring to mind traditional discourses on the subject at hand.
But the panorama is charmed, charmed by the magic of a method interested
only in pointing out “the origin and the relation of pure ideas.”

Thus, while to the reader less versed in dialectics Machiavelli might
represent the leading intellectual advocate of ruthlessness in politics and the
philosophical justification for the actions of a Cesare Borgia or an Adolf
Hitler, to Croce “Machiavelli’s problem was that of asserting the real
quality and the necessity of politics as politics.”

Hegel, whom we recognize
as the champion of Germanism and conservatism, is esteemed
by Croce
“for his new and historical concept of reality.”

Indeed, the magic of Croce’s
method permits him, though he is now hailed as a leading liberal and demo-
crat of Reconstruction Italy, to admire the “reactionary writers” both for
their “strong feeling of the State as both authority and mutual consent and
as an institution which goes beyond the pleasure of abstract individuals,”

† Chief Justice, Connecticut Supreme Court of Errors.

1. P. 115.
3. P. 92.
as well as "their doctrine against equality and against Jacobinism, since they were opposed not only to 'geometrical governments,' but to all governments founded a priori and without basis and historical continuity." 4 And, while Croce must admit Rousseau's political importance in so far as he "provided the innovators with arms and flags in those centuries during which the last vestiges of the Middle Ages and of feudal and clerical privileges were being hunted out of existence and during which modern society was established," 5 Rousseau is denounced for his tendency "to seek the criterion for judgment and the model for action in nature conceived above and beyond history, in reason conceived as pure reason, as an ideal devoid of reality, but not in reality itself, not, that is, in historical and spiritual reality." 6

But for what could Croce be searching? On the one hand he puts aside the significance of ideas as ideologies, as slogans and battle cries that fuel the emotive fire of mass action, and on the other he espouses the principle of ideas founded on historical reality. And while claiming to be interested in "the origin and relation of pure ideas," he, at the same time, denounces Rousseau for seeking criteria of judgment "in reason conceived as pure reason." Is Croce's system actually so filled with contradictions, or are these resolvable in terms of Croce's final criticism of Rousseau, that his ideas "understood as doctrines or criteria for the explanation of facts, were and are simply absurd"? 7 Does this signify that Croce means, by pure ideas, ideas rid of their slogan significance in a particular historical situation but nevertheless meaningful because of their more universal operational implications? Is he in search of principles that can be translated into action not irrationally but through exercise of the intellect? Does he look for a method of thinking or experimenting about human conduct, or is he, at least, ready to deliver himself of findings resulting from his own thought and experimentation? The reader familiar with Croce's system knows that the answer to all of these questions must be in the negative:

Croce divides mind or reality into two categories, that of knowing and that of doing. Each category in turn is composed of two moments which follow consecutively. Knowing, or the theoretical category, consists of knowledge of particulars (art and intuition), and of knowledge of universals (philosophy). Of these two, knowledge of universals is to some extent dependent on prior knowledge of particulars. But art, the prior moment, stands independent of philosophy. Likewise, the theoretical category is entirely independent of doing, but doing is dependent on theoretical knowledge. The practical category involves particular (economic and political) ends on the one hand, and universal (moral) ends on the other. Again, moral ends are to some extent dependent on political or economic ends, but the latter are entirely independent of moral ends. Thus the beautiful and

4. P. 85.
5. P. 70.
6. P. 68.
7. P. 71.
the true as aspects of theoretical activity, and the useful and the good as aspects of practical activity, are the only generic concepts in Croce's system.

Several questions immediately come to mind. The first, which is also the most obvious, is what has become of evil, useless, false and ugly activity? The second is concerned with Croce's seeming dualism between morality and politics, and its corollary that the concept of useful is removed from moral considerations, though utility is thus far the only criterion that has lent itself to the formulation of an operationally meaningful ethics. This dualism does not have to be significant, if moral values would in some way help us to decide what is useful. Croce's moral moment could then be dismissed as meaningless, and our exclusive concern would be a study of his more meaningful economic and political moment. But it has already been pointed out that in Croce's system politics is entirely independent of morality, though the latter presupposes politics. "Moral man," according to Croce, "does not put into practice his morality except by acting in a political manner and by accepting the logic of politics." This means that if at a time when the moral conscience is at its highest it becomes necessary to commit murders or break a promise in the interests of the State, then "these actions can be neither breach of promise, nor murders, nor any kind of roguery or wickedness; just as the 'magnanimous lie' of which Tasso speaks could not be a 'lie,' exactly because it was 'magnanimous'. . . .' Immediate group or individual conduct is, thus, never consciously limited or guided by, or tested in terms of, moral values. As long as man has developed a moral conscience he may freely follow the established rules of the game of life.

But this conclusion seems puzzling, for Croce in another place denounces "the series of illogical maxims which declare that it is sometimes necessary to do evil in order to be of service to good, that private ethics are different from public ethics, that it is impossible to take part in politics and keep one's hands clean, and that in the interest of the State one must, if necessary, break a promise or commit murders." Not only does he denounce these maxims but he recognizes them as the consequence of a dualism between political and moral action of which he also disapproves. How then does Croce rid himself of his seeming dualism? And how does he find in his system a place for the concepts of ugly, false, useless and evil?

Croce once studied history. And just as did Hegel before him, he discovered by a peculiar process of selection of material that all events tend to become their opposite and culminate in a synthesis of themselves and their opposites. He then, by involved metaphysical reasoning with which we need not concern ourselves here, discovered that history and philosophy are identical. In his philosophical system each moment then became a synthesis of both itself and its opposite. Hence, useful activity came to include worth-
less activity, and good activity evil activity. It was thus that the concepts of ugly, false, worthless, and evil were given their place. But the dualism between good and useful was not resolved even to that degree. One moment could never become the synthesis of another moment or its opposite. The moments are autonomous. Only in so far as history is the unity of all activity consisting of all four moments, are morality and politics part of a whole. Hence each event or historical situation contains aspects which are moral, i.e., good and evil; economic or political, i.e., useful and useless; philosophical, i.e., true and false; and aesthetic, i.e., beautiful and ugly.

No one need quarrel with that conclusion. But Croce does not stop there. His magic touch makes all familiar distinctions vanish. What is the State but the government, and what is the government but a group of individuals, he asks. What, therefore, is individual action but group action? And this in turn is nought but an historical event. Individual activity at a given instance, having thus become identified with history, is, therefore, also good and evil, useful and useless, true and false, and beautiful and ugly at one and the same time. Again, one need not quarrel with that conclusion, for criteria such as good and evil might well be too vague and diffused to have operational meaning. But one would search Croce's philosophy in vain for a substitution of more meaningful criteria or methods for valuation. Conscious valuation can not guide human conduct. That is the inevitable conclusion.

All other practical signposts also fall by the wayside. All government involves decision by one, counsel by the few, and cooperation of all. All government is therefore at the same time monarchy, aristocracy, and democracy. And of the distinction between liberty and authority Croce says: "Whereas the word 'liberty' is pleasing, the word 'authority' is chilling to the spirit. The fault lies solely with those who praise exclusively either force or authority, either consent or liberty, and forget that the term excluded by them is already included in the one they have accepted, because it is its correlative." 11 This may be so, but the question which still remains unanswered is, how do we know when the correlatives are in proper balance? Finally, the concept of economic classes must also disappear from history because activity is never economic alone, nor determined solely by economic considerations. Thus, Croce attacks without mercy the familiar concept of the bourgeoisie but substitutes therefor one by far more meaningless.

"... the bourgeois or middle class," he asserts, "must be understood more widely and in its pure sense as the total of all those who have an ardent desire for the public good, suffer its passion, sharpen and define their concepts for this necessity and act accordingly." 12 The number of traditional historical and political concepts that are, thus, eliminated by Croce may be multiplied indefinitely. But none are removed because they are unworkable or meaningless. Rather they are dismissed as merely empirical and operational.

11. P. 15.
Thus, vague meaning becomes confusion and this in turn leads to an utter absence of meaning. The synthesis of this confused history is embodied in Croce’s concept of “liberalism.” Liberalism, Croce states in one place, means any system of government and economics with “the sole limitation, on the sole condition, interpreted to insure the unceasing progress of the human spirit, that none of the means chosen will prevent the criticism of what exists . . . .” Yet, subsequently, Croce states that the “liberal mind regards the withdrawing of liberty and the times of reaction . . . as incidents and means of the eternal life of liberty . . . .” If then, indeed, the withdrawal of the rights to criticize what exists is a “means of the eternal life of liberty,” liberalism does not even require the one condition of tolerance. And it becomes difficult to perceive just what Croce’s liberalism does require, or what, indeed, its meaning might be.

Croce’s presentation does not aid in thinking about our conduct as members of a group. For as we progress in his system, little in it denotes human conduct, and an even lesser part deals with the problems that face us today. These have, indeed, become complex, and the direction and goal of our conduct has become more and more difficult to perceive. The countless disillusioned need inspiration from the pamphleteers of old. The Thomas Paines and Rousseaus of a yesteryear might well save the day today. But inspiration is not all we need. It must be properly harnessed and channeled. More than ever we are in need of a method for clear thinking about particular problems of conduct. To present such a method, or at least some suggestions relevant to its formulation, should also be the task of those who write about politics and morals.

But Croce neither inspires, nor teaches to harness inspiration. His book leaves us lost and hopeless, astonished over the fact that it was written. “Why,” wonder those who have retained sensitivity, “must he add to our bewilderment?”

DAVID HABER†


The book has already been widely acclaimed as witty, civilized, brisk, sagacious, and irreverent, and it is in fact about as funny as one could expect or want a book on college teaching to be. It is written throughout with a Frenchman’s wit and regard for reason and with a tone of no-nonsense that reminds one Mr. Barzun has been in a French schoolroom. From chapter

---

13. P. 117.
14. P. 121.
† Law Clerk to Judge Charles E. Clark, United States Circuit Court of Appeals, Second Circuit.
headings and epigraphs to incidental metaphors and puns, the jokes are chosen from a rich experience as "educator."

Mr. Barzun of course deprecates the name "educator." The title of the book and the use throughout of such active and concrete words as "teaching" and "teacher" represent an acute mistrust of the more ambitious and nebulous "education" and its paraphernalia of gadgets, gramophone disks, and sound films, and the patois of educators, the jargon of methods, fields, areas and problems. In one direction, Mr. Barzun modestly sets himself a limitation, to refrain from educational theory, but in another he expounds the dignity of the mind and distinguishes its cultivation from practical lessons and the service of animal needs. A teacher is taken as a human being in intellectual and emotional relationship with other human beings.

It is a tactfully written book in that, while "educators" and educationalists may feel their toes trodden upon, the larger classes of people concerned with teaching—parents, students, teachers themselves, and even deans—are treated so truthfully and yet anonymously that the individual will be forced to say for himself, this means me. It is not really so much a revolutionary book (one to "change the whole trend of American teaching") as a bright and accurate comment on both the good and the bad of American college teaching. College teachers will recognize descriptions of their own best moments and of their worst. Mr. Barzun tells what every teacher knows, and argues for no principles with which most teachers will not agree, though they may envy Mr. Barzun's talents in practice. It would appear that Mr. Barzun is a very good teacher. He is, moreover, a teacher's champion and has told tales out of school which many teachers will congratulate themselves on seeing in print: as that examinations (not aptitude or I.Q. tests) are an important part of teaching discipline, that marks too are important and it is "cruel nonsense" to say that students should disregard them, that despite certain easy, cordial relations, even a tinge of affection, "friendship between an instructor and a student is impossible," and that teaching is a very hard job. ("An hour of teaching is certainly the equivalent of a whole morning of office work," and when scholarship is thrown in, "sabbatical leaves are provided so you can have your coronary thrombosis off the campus.")

The conflict between teaching and scholarship (Chapter XIV, "The Ph.D. Octopus") is one that Mr. Barzun would resolve by recognizing the scholar as a special kind of creator whose efforts are only diluted by teaching, and the teacher as an artist who is spoiled by research, a scheme of rewards (salaries and grants) appropriate to this distinction being suggested in Chapter XX, "The Little Money." It is an ideal to which the teacher-scholar who has felt the pinch will scarcely object, but one which may be criticized in the speculation whether college teachers as a tribe do not tend toward scholarship and breaking into print. It is not in fact easy to draw a line between the area of one's own enlightenment (the research that goes into preparing a course) and the wider realm of what is known about a sub-
ject by the most knowing (the research for a book), or to move one horizon without being tempted to move the other. Mr. Barzun himself has obviously not been able to do so. Research and teaching would seem to be, for some minds at least, a natural complement of each other, and it may be that the conflict between classroom and Publications of the Modern Language Association reflects only the fact that a day and a life are too short—like the conflict between milking the cows and making hay.

Teacher in America is written in a returning, cumulative, and emphatic pattern. A series of twenty-one essays, on such topics as reading, writing, mathematics, science ("The Ivory Lab"), arts, classics, tests, administration ("Deans within Deans"), women's colleges, and extension courses, is oriented upon a certain few principles in such a way that almost any chapter is an epitome of the whole book. Two of these principles—that of dramatization and that of the unity of intelligence—are perhaps the main sinews. Drama, as Mr. Barzun sees it and as one will scarcely care to dispute, is what makes teaching work—a constant dramatic situation between teacher and student, an intellectual drama that in the lecture room becomes theatre, a dramatic structure even in textbooks. The good teacher is the one who "dramatizes." It is an ideal of vitality, relevance, subtlety and point—such an ideal as a teacher dreams about and realizes in part.

But what is most gratifying is to find Mr. Barzun insist over and over that teaching is the cultivation of a single activity, the intelligence. ("The only thing worth teaching anybody is a principle." "The very nature of intelligence is adaptability.") It was high time that somebody said this again out loud. Mr. Barzun is not an exponent of the old view (discredited by empirical investigations like those of Thorndike) that mathematics or grammar can train the mind for everything else (though he ventures to hint that L-t-n is a good introduction to a large group of languages). He knows that schooling cannot train for practical life. But he stands in healthy reaction to the excessive pluralism of recent educational discussion and practice—to the factual snobbery of Ask Me Another and Information Please, to the absorption of curriculum by physical science, the concern for "robot aptitudes," and "seven hours of saw filing" or "Pre-Theological Rural Sociology." Mr. Barzun knows that the three Rs "end up in poetry, science, and the search for the Infinite," that, as men have known for three thousand years, "matters of knowledge naturally divide themselves into special and general, that both are needful, but that whereas the special add to one's powers, the general enhance the quality of all of them." Chapter XII, "Columbia College, Columbia University," using "Columbia College as highly representative of modern instruction throughout the country," discusses a curriculum based on three broad divisions of thought and action in the modern world, science, social science, and the humanities, with a greater proportion of prescribed work in the first two years than is dared at most other institutions.

"Excitement animating good brains," might be taken as an epitome of
what Mr. Barzun expects of successful teaching. One may perhaps wonder what are the fullest implications of the "excitement." We must have passion, he tells us, "feeling and thought successfully fused." "We must be master builders." The lesson seems to be about a kind of enthusiasm such as Santayana thought he found at Yale in the 1890s—enthusiasm "for its own sake, . . . flow of life, no matter in what direction." It may seem absurd, while discussing so level-headed a person as Mr. Barzun (the author of *Darwin, Marx, Wagner* and of *Race: A Study in Modern Superstition*), to suggest that his closing pages are not proof against the irony of master builders in the square at Milan and the burning Chancellery. And the alternative, or the answer to this criticism of Romanticism and the Modern Ego, is one which Mr. Barzun himself has given in his earlier book of that title. "Two diametrically opposed schemes can be carried out with a like enthusiasm; but that does not make them the same." It would appear from this that it does make some difference what we think with excitement. For one thing, we must not think the thoughts of "unitary leadership based on oppression." Perhaps there are other things which we must not think, things having to do with gas chambers and machine guns, for example,—or breaking promises or telling lies? Or, if the only value of Christianity is that it "was once a hope and a force which did inform learning and did create art and science," what happens when the world realizes this—not only about Christianity but about anything that any teacher might teach a pupil? One may foresee then some difficulty in finding a point in believing, or a reason for being excited. Thought and belief become exercises in self-reliance, medicine ball to make us strong enough to play medicine ball.

The difficulty is not peculiar to Mr. Barzun. He has close ties with all those who have been telling us that poetry must take the place of beliefs. His romanticism, as he himself has clearly insisted, is one of the basic and recurring human attitudes, that of revolutionary building. The difficulty is to value thinking as thinking, as a genuine, original and vital activity, not a rote, but not forget thinking as thought, which bears a relation to a world of reality. In the most important respects this world cannot be rebuilt by the thinker, and indeed as far as it can be rebuilt it must be rebuilt according to a desire, which in turn supposes a point of reference in reality. Where there is no limitation to activity, there is no direction, that is, no purpose, no reason at all for acting. In so far as Mr. Barzun writes a philosophy of teaching, one may be glad of his concern for thinking as thinking. A book, as an eminent psychological critic has said, is a machine for thinking; so, I suppose, is a teacher. But a philosophy of life is another matter. And both pupils and teachers have to live. In an earlier chapter Mr. Barzun fears it may be trying for a teacher in a great-books colloquium to shift his discipleship as often as is needed—"to run the gauntlet of world systems from paganism to science." Trying, and, in a full sense, inhuman.

In the terms of Mr. Barzun's master-builder metaphor, we preserve the "shell" of our colonial house; the "plumbing" (he calls attention to his play
on the word) "must be new." The mutability of apparatus is a long-standing source of dismay to philosophers, and the propensity of mankind to improve lead pipes is incurable, though nobody, least of all Mr. Barzun, supposes we are happier than Geoffrey Chaucer because we have better plumbing. Plumbing in the other sense, the sounding of depths or testing of the perpendicular, is just the activity by which philosophers have tried to find something real. That is why they have been plumbers.

W. K. Wimsatt, Jr.


As contributing architect to two world wars the Junker has achieved universal notoriety. But the popular conception of him, however menacing, is vague and shadowy. Often the Junker is imagined to be an uncouth, feudal landlord, a boorish Squire Western of East Elbia. Or again he is pictured as the cold, ascetic, hawk-face professional soldier, the impassive von Rundstedt. Although popular suspicion here is soundly based and the two images both have considerable truth to recommend them, the origins, extent, and true nature of the Junker and his class are only gradually being revealed to the English reader.

This study by Dr. Muncy is an important addition to the list. It is intended to discover the degree and extent of Junker influence in the Prussian administration under William II between the years 1888 and 1914. The period is chosen partly because contemporary liberals were then most vehement in their fulminations against Junker influence and partly because by the later years of the nineteenth century the survival in power of such a feudal group had taken on all the fascination of an historical anachronism. Also the statistical, quantitative analysis employed by Dr. Muncy necessitates some limits being imposed on the period under survey. By examining the lives of some 1500 individuals from 668 families which can be counted as Junker stock this book does much to determine "the capacity for political power which the Junkers derived from office holding."

But the prerequisite for an omelet is eggs and Dr. Muncy wisely turns first to the development in history of those particular traits which combined to form the Junker of the nineteenth century. This survey, based on German authorities, is valuable in its own right. Originating as the German colonizers in East Elbia in the twelfth and thirteenth centuries the Junker became the country squire of Prussia's seven eastern provinces. Their frontier location and their poverty compared with the feudal nobility of wealthier western Europe condemned the Junkers to the role of local, landed autocrats, rather than absentee court nobility, and instilled that spirit of independence.

† Assistant Professor of English, Yale University.
and aggressiveness so characteristic of their descendents. In the seventeenth and eighteenth centuries the Prussian kings miraculously harnessed this power to the royal chariot, secured the submission of the Junkers to the royal will and, in time, even an enthusiasm for service in the royal army and administration. The price was privilege, power, position in the state, and continued control by the Junkers over their own localities. If a sense of mission, born of a devout pietistic Protestantism and driven home by the threat of economic collapse at the end of the nineteenth century, is added, the picture is complete: an autocratic, agrarian feudal caste, surviving in the new age because it had secured state employ, a pillar of conservatism in its devotion to the old order and its instinct for self-preservation.

From this historical survey Dr. Muncy derives her criteria and chooses 668 families, some original Junker stock, some absorbed before the nineteenth century into the tradition, and others more recently, but all having various characteristics in common: ennoblement by 1888, property (but no great wealth) in the seven eastern provinces, Protestantism, no connection with the aristocracy of the south or west, service in army or administration, no middle class occupation, Junker marriages, and conservatism in politics. With its frame of reference thus established the book proceeds to discover the types of careers chosen by Junker officials (service at court, diplomacy, bureaucracy, provincial self-government, church and judicial offices, the Prussian Diet). Then follows an examination of the reciprocal action of the Junker background on his office holding, the relation of land-holding and economic advantage to the offices preferred by the Junker, and the qualifications demanded, particularly that of membership in the Officers Corps. To demonstrate these various types as well as to show the occasional exception to the rule the author next proceeds to a detailed analysis of thirteen families. Finally the last chapter evaluates the importance of the Junker, now clearly outlined as to origins, traits, and background, in the different branches of the Prussian administration.

The above analyses are effected by means of a series of ingenious statistical combinations which allow Dr. Muncy to make valid quantitative judgments within the period and group chosen—long the ideal of the social historian. Official lists, memoirs, and particularly biographical dictionaries have furnished her with the raw materials out of which she has laboriously fashioned these well-rounded individual and family portraits. This type of analysis does not make for easy reading but the results carry a degree of conviction often denied the less factual generalizations of the social historian.

The results of this excellent and thorough study are not revolutionary but serve rather to implement earlier suppositions about the role of the Junker in Prussian politics. Although individual variations naturally appear, the Junkers did possess a very high degree of social solidarity. Relatively exclusive marriage customs, the maintenance of a high birth rate, and unusual fidelity to the careers traditional to their caste—farmer, army officer and
administrative official—all combined with their traditional position to give the Junkers a degree of importance in the state and society which far outweighed their numbers. Their goal seems to have been power and self-preservation rather than simple material gain. The well-spring of their power was their strength as landed proprietors and Dr. Muncy traces an interesting trend among Junker officials to lose contact with the land and thus transmute their Junker characteristics into the bureaucratic or governmental attitude of a state official. Besides the losing battle against sheer weight of numbers the Junkers seem also to have been losing ground within the Conservative party. In the years before the war the extreme, single-purpose tactics of the Agrarian League were foreign to the older, loyal, and more selfless instincts of the Junker. But that their power was weakening remains really not so remarkable as that it had survived as long as it did. Surely one of the most influential developments of modern times has been the survival of this feudal caste, strong in its hereditary position, location and economy, transformed by the Prussian crown into a nobility of service and then perpetuated long past the time when the noble classes of western Europe had almost merged their identities with the rest of their nations. The anti-democratic and unregenerate conservatism of the Junker has played a part in the Empire, the Republic, and Hitler's Reich. Whether the Junker is allowed to survive the present annihilation of Germany remains, as Dr. Muncy says, one of the great problems for the peacemakers.

THOMAS C. MENDEHALL II†


DR. HUNTINGTON'S many years of study of climatology, geography, eugenics, anthropology, and history have culminated in a work that seems to this reviewer to be of lasting value. Although his special field is the relation of climate to civilization, Dr. Huntington does not commit the specialist's crime of interpreting a phenomenon that is the resultant of many forces solely in the light of one. Actually, this ingenious scientist brings to bear upon the problem of the rise and decline of civilizations original investigations of his own in quite diverse fields. Thus he has made excellent use of standard works of biographical reference in charting leadership, selection, migration, and social progress in the United States and elsewhere. I do not know of any other student of the history of civilization who has utilized so many approaches in so careful and judicious a manner.

In the first portion of the work the author discusses generally the back-

† Assistant Professor of History, Yale University.
ground of civilization. He then embarks upon an excellent disquisition about the role of heredity in civilization, adding to an up-to-date summary of work done in this field by others some valuable contributions of his own. Dr. Huntington is especially skilled in drawing detailed and illuminating comparisons between the achievements of different groups of peoples in apparently similar environments—for example, the Icelanders and the Newfoundlanders.

The third part of Mainsprings of Civilization is a detailed treatment of the relationship of physical environment to human activity, including geography, seasonal variations, the weather, diet, health, disease, cycles, rhythms, and periodicities. The presentation of the evidence of cycles is elaborate, and no satisfactory interpretations of such phenomena have been devised. As a result, Huntington’s admirable study closes in some uncertainty.

Ellsworth Huntington possesses, in addition to his scientific qualifications, no small literary skill. His books are well written as well as valuable in content. This reviewer is of the opinion that Mainsprings of Civilization could be read profitably by nearly every scientist, humanist, legalist, philanthropist, industrialist, as well as by the intelligent and educated Homo sapiens who is no sort of an -ist at all, not even an optimist.

Earnest A. Hooton†

† Professor of Anthropology, Harvard University.