BOOKS

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

Miss Bontecou's careful study deals chiefly with President Truman's loyalty program for federal employees; its date of publication precluded an account of events after January 1953. The new administration soon produced a new program. The claims made about its great differences from and superiority over the Truman program might lead one to believe that her book does no more than embalm an oddity of the old regime. Any such notion should be dispelled. In the first place, the new program is not markedly different from the old. Second, though Miss Bontecou discusses the mechanics and motivation of the old program in considerable detail, she is principally concerned with basic issues that must be met in any formal attempt to exclude from employment Communists or Communist sympathizers. For these reasons alone, *The Federal Loyalty-Security Program* is a book of continuing utility.

The simplest way to create the appearance of novelty, one to which the advertisers have long accustomed us, is to leave the old wine in the old bottle, and put a new label on it. This was done by proclaiming that the old "loyalty" program was dead, long live the "security" program. In fact, however, at least half of all federal employees were already subject to screening under programs of the security type, programs of statutory origin which have existed for some time in all the major agencies where there are activities, information, or material which could be perverted to aid the enemy in any direct way. These channels existed concurrently with the executive loyalty program that applied to all federal employees. In most cases, whether the security or the loyalty channel was followed, the central issue was the same: the political reliability of the employee in the light of alleged Communist connections. If a loyalty board formed a reasonable doubt about the employee's loyalty, that was the only issue.

Two more elements are present in the evaluation of a security risk. The first is the "sensitivity" of the position: how much injury can this employee do? If he is handling secret codes, you obviously are going to be less indulgent than if he is handling a lawn-mower. The second is the unsuitability of the employee to hold a sensitive position because of a variety of non-political considerations: his liability to blackmail, his carelessness in keeping secrets, etc. Speaking generally, these two security elements are related to each other in the criteria of the new executive order. But the old loyalty criterion of association with subversive persons and organizations is also retained, and it is apparently—as before—applicable to all employees, regardless of the

sensitivity of the job. So the new program can properly be described as directed to security, not to loyalty, only if one accepts the implausible assumption that the occupant of *any* federal position may in his official behavior jeopardize national security.

Similarly, a bold attempt has been made to represent that the new program resolves, in a manner far superior to the old, the basic conflict between swift procedures that will fully protect the Government, and the safeguards required for fair play to the employee. Consider a passage from a recent statement by Mr. Scott McLeod:

> Under the old Truman program, the issue involved was "loyalty." Before a person could be discharged from Government employment, it was incumbent to prove before special hearing boards with counsel that the individual was "disloyal." Obviously, to prove that the person has been disloyal one must be able to prove that he has committed some overt act against the Government of the United States. In a word—Treason. If such was the case, we have statutes to take care of that. Government employment was treated as a right instead of a privilege, and the issue was beclouded by raising the phony cry of civil liberties.[1]

Anyone who believes this is an accurate description of the Truman program should feel especially obliged to read Miss Bontecou's book. There *was* a "cry of civil liberties" (which I suppose in some quarters automatically warrants the epithet "phony", as in "phony liberal"), but it arose over important issues of vague charges, reliance on undisclosed evidence, and other matters that by and large are unaltered.[2]

Administrative alterations are to be found in the new program, maybe for the better, maybe for the worse. For example, there is now no central review board, an omission that has caused unfavorable comment. The history of the old Loyalty Review Board, as Miss Bontecou lays it before us, may suspend judgment. It apparently developed a stiffness in the joints; its regulations tended to impose picayune restrictions on agency boards without achieving uniformity in matters of substance. And the quality of the Board's mercy was increasingly strained by Congressional pressures. Thus the twin ideals for a review board—uniformity and objectivity—tended to become compromised.

After an introductory chapter that briefly assesses the internal Com-

1. Address of Mr. Scott McLeod, Administrator, Bureau of Security and Consular Affairs, Department of State, Before the American Legion Convention, Topeka, Kansas, Aug. 8, 1953, Dep't of State Press Release No. 425, Aug. 7, 1953, p. 8.

2. Miss Bontecou herself has helpfully presented a summary of the significant points of likeness and difference between the Truman and Eisenhower programs. See Bontecou, *President Eisenhower's "Security" Program*, 9 BULL. ATOMIC SCIENTISTS 215 (1953). If it is thought that she would be too much inclined to find the mixture as before, let me register substantial agreement with her observations.

munist threat and then describes the little-known antecedents of the loyalty program before and during World War II, *The Federal Loyalty-Security Program* plunges into three chapters of intensive description and analysis. They constitute, I believe, the only systematic account of the organization, investigative procedures, and adjudicative techniques and standards of the loyalty program. The discussion of actual cases, which cannot fail to be illuminating, is based on the author's study of 85 cases, either through the transcripts or through "detailed accounts" given her by counsel; and she is of course familiar with the episodes that have been recounted by other writers in the field.

The fifth chapter, on "The Attorney General's List," is also unparalleled and in many respects is the most incisive contribution of the book. It reviews previous attempts to compile official lists of subversive organizations, traces the use in loyalty cases of the list inadequately compiled under Attorney General Clark, and then hammers home the complexity of the problem by a series of case histories of organizations on the list. These vignettes illustrate—granting the eventual Communist domination of the organizations—the error in attaching any weight to membership in them, unless it is carefully pinpointed as to time, place, and motive.

A chapter on due process and the litigated loyalty cases seems to this reviewer a little confusing in its classification and discussion of the cases, although the cases themselves are largely responsible for any confusion. The chief contribution here is another blow at the notion that due process issues are disposed of by intoning, "Government employment is a privilege and not a right." This tired maxim should be reserved for disappointed job-hunters, and excluded from serious legal discussion. An elegant passage in this chapter documents the resemblance between the loyalty program and the Inquisition, with extensive footnote references to Church documents in Latin; and the footnotes throughout are full of plums, slightly spotted with misspelled but readily identifiable proper names (*e.g.*, that un-Proustian jurist, "Judge Swann"). There is also a chapter, earlier printed in this Review, which tells how they order these things better in England.[3] An extensive collection of statutes, regulations, etc., appears in the appendices.

Miss Bontecou's concluding recommendations are moderate, like her tone generally, which is never excited—even when she is describing the most appalling bumbles of investigators and crudities of board members. I cannot do her proposals justice in outline, and will only reiterate that they are every bit as applicable to the new program as to the old one.

3. Bontecou, *The English Policy as to Communists and Fascists in the Civil Service*, 51 COL. L. REV. 564 (1951).

This volume is the last in the Cornell series on civil liberties in the control of subversive activities. Each is a trustworthy analysis of one aspect of the problem. A summation by the general editor, Professor Robert E. Cushman, will knit the whole together. The Rockefeller Foundation undertook in 1948 to support these studies. In 1952, the Foundation's President was obliged to defend this grant before a Congressional committee.[4] One wonders what would be the fate of such a proposal if it were presented to the Rockefeller trustees in 1954, especially if the trustees were mindful of the attacks that have already been made on the Ford Foundation's new Fund for the Republic—attacks which may be described as attempted infanticide.

These forebodings are in no way intended to asperse the present fortitude of the Rockefeller trustees. They only echo the tumult of events. Above that tumult one can still hope to detect, from studies like Miss Bontecou's and those of her colleagues, the still small voice of reason.[5]

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CONDUCT OF JUDGES AND LAWYERS. By Orie L. Phillips and Philbrick McCoy. Los Angeles: Parker and Company, 1952. Pp. xiii, 247. $5.00.

LEGAL ETHICS. By Henry S. Drinker. New York: Columbia University Press, 1953. Pp. xiv, 448. $4.00.

The young man who starts his career in the law and the thoughtful layman who looks at our legal system are troubled by many questions fundamentally moral. One of the most persistent is the evident conflict in the advocate's allegiances. A partisan, sworn to put forth his best legitimate efforts toward his client's cause, the lawyer is at the same time an officer of the court, obligated to protect the judicial process from distortion. Even in a civil case he is not primarily a judge of the merits of his client's cause;[1] his duty requires him to assert whatever is fairly to be said in its vindication, even if some doubt may trouble his mind concerning the correctness of his client's claims. Yet the boundaries of doubt are uncertain; at some point doubt becomes disbelief. And as the advocate's sworn duty is to avoid the

4. Hearings before the Select Committee to Investigate Tax-Exempt Foundations and Comparable Organizations, 82d Cong., 2d Sess. 514-19 (1952).

5. It should be noted that the reviewer is engaged on a comprehensive survey of loyalty and security programs affecting employment, and that he read and criticized parts of Miss Bontecou's book before publication.

1. For the difference between criminal and civil causes compare Canon 5 with Canons 15 30 and 31.