

## REVIEWS

NATIONAL SECURITY AND INDIVIDUAL FREEDOM. By Harold D. Lasswell.  
New York: McGraw-Hill Book Co., 1950. Pp. xiii, 259. \$4.00.

"The Bar is in a peculiarly strategic position to provide leadership in solving the problem of reconciling our security measures with the essentials of our heritage of freedom. Its tradition of leadership in public affairs and devotion to civil liberties, together with its understanding of the importance of fair procedure in the maintenance of liberties, place special responsibilities upon it."

THIS challenge is from an eloquent letter addressed to a section of the American Bar Association at its 1951 convention by a well-known layman, Harry S. Truman.<sup>1</sup> The section meeting, like the book here under review, was concerned with "The Protection of Individual Rights and Government Security in Times of Stress." If the meeting had done nothing more than convene, read the President's letter, and adjourn, it would have been worthwhile. For some listeners might have been stirred to take on their special responsibilities. They might, as the President suggested, give "searching scrutiny" to such activities as the security and loyalty programs of his administration. They might, as he urged with respect to the current sedition prosecutions, even revive "the notable tradition of willingness to protect the rights of the accused" to "adequate representation by competent counsel."

For these manful undertakings Professor Lasswell's essay would offer little direct guidance. Its concern is not, primarily, with outrages of the moment, like teachers' and lawyers' loyalty oaths, persecution by Congressional committees, and McCarthyism in general. Alan Barth's *The Loyalty of Free Men*, recently reviewed in these pages,<sup>2</sup> is a better guide to these dark corners of American life. Lasswell's objective is farther reaching. He recognizes, and in an opening chapter boldly sketches, the intensity and continuing character of the threat to national security posed by Russian communism. Our reaction to one danger creates another one: the risk that we will ourselves fashion a garrison-police state. The outlines of such a state Lasswell was one of the first to foresee; indeed, the term "garrison state" was his coinage. It is marked by a decline in information and an increase in suspicion and intolerance, by a decline in civilian authority and the ascendance of the military. Some of its aspects, such as the diversion of resources to armaments, are unavoidable. The problem that Lasswell poses is how to create an effective garrison without repressing individual freedom. He proposes that every national security measure should be critically examined,

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1. N.Y. Times, Sept. 19, 1951, p. 10, col. 2. I hope that Bar Association Journals will give this letter the attention it deserves by reprinting it in full.

2. 60 YALE L.J. 744 (1951).

with a view to minimizing whatever danger it holds for four essentials of freedom: civilian supremacy in government, freedom of information, individual civil liberties, and a free rather than a controlled economy.

Subsequent chapters advance a great variety of proposals to be carried out by or on behalf of the Presidency, the Congress, and the Courts. The flavor of the mixture will perhaps best be conveyed to the legal reader by the chapter on the courts, though it should be said that the patent resistance of the legal system to innovation rather curbs the author's spirited inventiveness. Nevertheless, with the acknowledged help of a legal advisor, Lasswell is able to review in a few pages the prospects for continued vitality of individual protection based on due process and the Bill of Rights, and the less encouraging record of the Supreme Court in the face of abusive martial law or military government. About the only affirmative recommendation in this chapter—and this makes it not at all typical of the rest of the book—is for a strengthening of the Public Defender institution. The hope is that cases involving invasions of freedom will get to court sooner and in better shape than when insignificant victims of autocracy have to fight their own battles. The shortcomings of the adversary process in public issues of this sort are illustrated by the Hawaiian martial law cases in which, though able counsel were involved, the decision that the civilian courts had been wrongly closed the day after Pearl Harbor was not reached until the war was over.

The final chapter is a barrage of suggestions about what the public can do in the way of councils, committees, inquiries and general concern toward achieving the desired balance between security and freedom.

I do not propose to embark on a critical analysis of the proposals. To do so would be unbecoming, not to say imprudent, in view of my association with the author. The book bears the imprimatur of the Committee for Economic Development, which means that the author, though he had complete freedom of expression, had the benefit of criticisms from a competent staff and from an advisory committee, composed mostly of the alert businessmen who spark the CED. I would prefer to emphasize the significance of my colleague's essay for readers of this Journal, and especially for Yale men in law.

The lawyer's special responsibilities in this field are most readily awakened by instances of individual oppression. What constitutes oppression, and what on the contrary is an endurable sacrifice for security, is determined partly by standards of decency that lawyers consider immutable, and partly by the way in which government institutions are regarded. To illustrate, some lawyers may consider eligibility for government employment of little consequence to the employee or to the rest of us. Accordingly, they may be indifferent to abuses of due process in government employees' loyalty cases that they would not tolerate for a moment in an action to abate a client's pigpen. Lasswell, as I have indicated, says little about loyalty checks; and by putting problems of individual freedom in a matrix of government-as-a-whole, he makes it clear to us that we should not think about the issues solely in terms of beating down

the menacing state. Efficiency and imagination in government are helpful in fostering freedom as well as security. Thus, the lawyer needs to be professionally concerned with the organization of Congress. In addition, it is familiar flattery to remind the lawyer of his power and prestige as a citizen. As Lasswell remarks, it is more than a joke to say we have a government of lawyers, not of men. His book is a concise reminder of some of the things we should be concerned (for example) about as citizens.

I would further commend this book to Yale men in law as an introduction to Harold Lasswell. His presence on our faculty for five years, preceded by lectureships for another five, has doubtless aroused the curiosity even of those who accept with equanimity the notion that a non-lawyer is good tonic for a law school. If their curiosity has carried them to the point of examining some others of Lasswell's recent writings, they may have been repelled. Lasswell's first training was in political science, and he still carries his card and holds forth at their meetings. Then he studied psychiatry seriously enough to be accepted as a peer in respectable psychiatric circles. Some of his books are the product of this union. A pioneering interest in propaganda and later in the whole area of communication got him on close speaking terms with psychology, anthropology, and sociology. He can also understand economists, though they do not always understand him. The point of this recital is that all these disciplines, just like law, have their own jargon. Lasswell habitually talks and writes—in academic circles—a mixture of two of these private languages, with a generous lacing of about four others. The result, especially since it usually deals with pretty weighty concepts, is sometimes a little difficult even for academic colleagues, if they speak only law and colloquial English. But some of us have made the effort, and find him an invaluable colleague. First, Lasswell is a walking Encyclopedia of Social Science,<sup>3</sup> a useful attribute in a school that professes to view law as a social study. Of more importance, he has a catalytic effect in the fields in which he collaborates in teaching. They turn out to be no more bizarre—fancy catalog titles aside—than Criminal Law and Administration, Jurisprudence, International Law and Organization, and Press and Radio Law.

To these enterprises—and to many other far-flung projects—Lasswell brings an urgent set of convictions about the need for understanding and meeting the world crisis by understanding and strengthening our own democratic institutions. His recent book is a set of practical propositions, almost a handbook, for that job. I almost neglected to say why, for Yale lawyers, it is a good introduction to Lasswell. It is in English.

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3. Partly because, characteristically, he read and reviewed each volume of the *Encyclopedia of the Social Sciences* as it appeared.

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