BOOK REVIEWS


When national security runs head on into the preservation of civil liberties, a major and highly difficult legal and constitutional issue is created. It is opportune that the May number of the Columbia Law Review should be devoted entirely to a problem which is evidently giving concern to the highest courts in the nation.

The issue contains a Note presenting a thorough and penetrating analysis of the Internal Security Act of 1950, with a temperate and judicious evaluation of the terms of that highly controversial attempt of Congress to grapple with the problem. One gets the impression that the act, commonly called the McCarran law, is not as impossible a piece of legislation as popularly supposed. True, in accordance with usual Congressional practice, it has been loaded with a bit of this and a bit of that, to incorporate the ideas of the large number of legislators who wanted to have a part in defying the Kremlin; and, although there are unworkable and probably unconstitutional provisions in it, the result of such legislative gesturing and compromising is not as bad as it might have been. A genuine effort has been made, by providing for hearings and the like, to safeguard civil liberties. In some cases—as in the required registration of communist organizations and their members—the protection of civil liberties may possibly wind up by rendering the law ineffectual. Probably not much that is significant has been added to the protection against “subversives.” The real contribution has been that, despite a tightening up of existing restrictions, safeguards for individual liberties have been provided that should prevent such wholesale invasion of them as was involved in the “relocation” of Japanese U.S. citizens after Pearl Harbor.

A further important contribution has been made with regard to the proscription of communist organizations, especially the “fronts.” A major legislative and administrative sport of late years has been the listing of fronts. Undoubtedly the communist infiltration technique has permitted communists to get control of a number of organizations innocuous on their face and originally commendable in purpose. Thus, the unfortunate citizens who joined some worthy enterprise for the best of motives find themselves being denounced as open or concealed party-liners. It is unquestionably a public service to pull the


sheep's wool off these animals. But the practice can be abused. The Attorney General led off with a list of over a hundred such organizations, selected by some process not yet disclosed, but certainly not after giving the victims their day in court. Whatever the process, it was not enough to satisfy the House Committee on Un-American Activities and the Committee has produced a much larger one, out of its own cogitations and again without giving a hearing to the organizations. Then others joined in the game, which seems to offer political pay dirt in the present state of public feelings. The Tenney Committee in California produced, characteristically, the finest and biggest list. Massachusetts, New York, Wisconsin, and Pennsylvania, all equipped with “Little Dies Committees,” also have lists, to mention only a few. The House Committee on Un-American Activities has prepared and released a booklet, *Citations*, which gathers together the names of all the organizations which have ever been mentioned by these committees. There are 564 of them.

Granted that the infiltrated organizations should be unmasked, it seems a little hard on the well meaning person who at some time has become a member or “sponsor” or contributor to some group devoted to an apparently worthy purpose, to find himself subjected to the charge of being a fellow traveller, without notice of the charge against the group, or a chance to withdraw. This is of peculiar interest to the academic fraternity, for professors seem to have little resistance to the appeal of a do-good organization, and they are particularly sought after as members, sometimes perhaps because their connections with universities tend to give the undiscriminating public the impression of endorsement by the university itself.

The Internal Security Act may make a contribution in preventing this injustice. The Act embodies a congressional policy that the compilation of “subversives” lists shall be made only after an open and impartial hearing. And the Law Review Note adds the hope that in consequence “there will be a halt to the promulgation of unofficial lists compiled *ex parte* according to self- and often ill-defined standards of disloyalty.”

The three signed articles high-light the effect of the anti-subversive laws in two particular areas—teachers and public servants. James Marshall, former president of the New York City Board of Education, writes of the Defense of Public Education from Subversion. His thesis is that communism means subservience to authority, the inculcation of hate, a retreat from reason, and that teachers who submit to such principles become impotent to teach the uses of reason or to develop the freedom, self confidence and self discipline that we want from education in a democracy. With this thesis as a base, Marshall considers its bearing on academic freedom, which is freedom to discover the truth and debate it, and concludes that the teacher whose mind is dedicated to communism is not entitled to claim protection of the principles of such freedom.

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4 House Committee on Un-American Activities, *Citations* (1948).
the other hand, we must be wary lest the fear of subversion unconsciously start a chain reaction of suppression. Fear of non-conformity in a democracy can equally lead to suppression. A delicate balance is called for.

Mr. Marshall evidently does not have the fear, all too common today, of letting students know fully about communism. He clearly does not feel that the simple idea is, by itself, dangerously infectious. He sees little harm in letting the admitted communist teach adult students, for they are mature enough to judge the doctrine for themselves, and are presumably not restricted to hearing one side of the argument. There is, therefore, no basis for an absolute rule calling for the dismissal of all such teachers. But this implies that the teacher's beliefs be openly admitted; if his connections are concealed the teacher is suppressing a material fact which the student is entitled to know and weigh. On the other hand, immature children, in primary and secondary schools, are not in a position to weigh the facts and the state has the right, in self-protection, to prohibit possible indoctrination at that level. And it seems to follow in both cases—that is, in the disclosure of the teacher's own beliefs at either level—that authorities are justified in inquiring into the teacher's beliefs.

The other field in which the effects of anti-subversive laws are considered in the Review is in connection with the loyalty programs in the civil service. This is done by an interesting contrast of the procedure in the United States and in England. Seth W. Richardson explains, out of his long experience as Chairman of the Loyalty Review Board, the workings of our legislation. He bases his consideration of the civil rights involved on the sound fact that no one has a right to work for the Government and that the Government does have a right to determine what kind of person shall work for it. There is some kind of paradox about questioning the Government's right to inquire into political beliefs hostile to the government itself in a system where, at least since Andrew Jackson's days, Democrats or Republicans have gone in or out of jobs according to their political beliefs.

Mr. Richardson's concern on the civil rights issue is largely the fairness of the procedure by which the beliefs of the individual are determined. A major problem here is the fact that the Boards may use the FBI reports on the employee, but the reports are not made available to the employee himself. The facts of the reports are given him but not the source of the information. Mr. Richardson concludes that this is inevitable, that the FBI reports and the information in them would not be available to the boards on any other basis; and the boards' attempt to offset this disadvantage to the employee is by doing everything else they can to help him, including a complete system of appeals. Remembering always that there is no constitutional right to a government job, Mr. Richardson makes a strong case that the procedure is a fair compromise with employees' civil rights.

The contrast with English policy, as described by Eleanor Bontecou, who has had a wide experience as teacher, attorney and social service research work-

er, is an illuminating study of English and American political mores. The Labour Government has felt its way in a gingerly fashion, trying to protect the government from such unfortunate incidents as the Fuchs case without undue hardship on the civil service. Instead of slashing away at the problem in our American way with legislation fierce enough to make headlines, the English procedure has consisted of a series of statements by the Prime Minister. It is to be borne in mind not only that the civil servants in England are of a high caliber and tradition, but also that they are protected by several unions which, especially under a Labour Government, must be reckoned with very genuinely. In their English way, there has been created a Whitley Council, with a Staff Side, and an Official Side, and many of the problems left to administrative discretion with us are thrashed out by negotiation between the two Sides. As a result of these discussions, substantial agreement of both Sides to a Memorandum on Procedure was reached, which determines the English practice.

The test adopted was whether the employee is a communist or so "associated with the Communist Party as to raise legitimate doubts as to his reliability." He is to be given notice of his charge with "all known particulars in amplification of the [policy] ... save only those which might involve the disclosure of the sources of the evidence." Less information is given than in the United States, and in the hearings less protection is given the individual, while the sources of information are more rigorously guarded. Although the system has been under continuous fire, apparently it has been operated with characteristic British moderation and good sense. The presence of unions watching over the interests of their members, and the possibility of questioning responsible ministers in the House of Commons, have doubtless contributed to this result. While, on the face of the record, civil rights are technically less protected than with us, it appears from the results that the English in their own way, not fussing too much about logic, have achieved at least as effective a compromise as we have between civil rights and administrative necessity.

The present hysteria about subversives, at least some of which certainly is politically induced, is in some ways the most serious problem of our day. Seldom has the country faced an enemy whose announced policy is one of infiltration and subversion, with a candid program that foul means are not only fair but praiseworthy. It is encouraging to find that even in the poisoned atmosphere which this creates not only is concern still felt for civil liberties, but also increasing attention is given to the resolution of the conflict between protection of the nation and protection of the individual. The concentration of an issue of the Columbia Law Review on the subject is timely and helpful in a discussion which bids fair to last for some time.

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9 Ibid., at 571.