

offer but a set of feelings and attitudes. To such a man, the opposition—whoever it may be—feels so completely dangerous, so powerful, and so wrong that it is much more important to keep them out of power than to do anything at all positive. It becomes dangerous to believe or to advocate anything. Because the New Deal Democrats advocated change, Chambers oftentimes talks as if they were, in reality, Communists. But at what point do you fire a federal job-holder? When he advocates an extension of social security? (After all, this puts more power and money in the hands of government.) When he has been definitely proved to have conspired against the government? Or when he is known to have advocated unpopular points of view?

It is the psychology of fear and negative witness which leads to the spectacle of abuse of the congressional right to ascertain the true facts of situations; to the dangerous declaration of "guilt by association"; to extreme penalties upon known offenders; to voluntary rejection by some citizens of their own basic freedoms out of the need to limit others. When truth is looked upon as a dichotomy, it finally turns out that the two sides are nearly indistinguishable. Totalitarianism, which leads to the loss of constitutional guarantees, is as much totalitarianism if accepted voluntarily as if it is enforced by someone else. Chambers endured a public ordeal unusual in its violence and his emotions lead him at times nearly to believe that Alger Hiss's friends could have defended him only because they too were Communists. All liberals are therefore suspect on that ground as well as others. Alistair Cooke saw the possible results of the Hiss trial as an increase in the demand for conformity. He says: "The verdict galvanized the country into a bitter realization of the native American types who might well be dedicated to betrayal from within. It gave to ambitious politicians a license to use vigilance as a political weapon merely. It brought back into favor the odious trade of the public informer. . . . It tended to make conformity sheepish and to limit by intimidation what no Western society worth the name can safely limit: the curiosity and idealism of its young. It helped therefore to usher in a period when a high premium would be put on the chameleon and the politically neutral slob."⁴

Cooke's forecast is being proved true by history. The danger of Whittaker Chambers' *Witness* is that it is a negative witness, a witness of fear and reaction.

James G. Miller* and Jessie L. Miller.

⁴ *Ibid.*, at 340.

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The States and Subversion. Edited by Walter Gellhorn. Ithaca: Cornell University Press, 1952. Pp. vii, 454. \$5.00.

This review is in good part the account of a misread passage:

It has been urged by thoughtful people that state and local security and loyalty programs are unnecessary and uniquely dangerous to civil liberty. This volume presents

a body of evidence, and an analysis of that evidence, which may aid the citizen in forming a judgment upon this point. (p. vi).

Despite the judicial tone of the second sentence, this passage in the preface by Professor Robert E. Cushman appears to be a statement of the book's thesis, as indeed it is. Moreover, it appears to be a statement of the thesis that *state and local* security and loyalty programs (as distinguished from national programs) are "uniquely" dangerous. This, I am happily convinced after completion of the book, it is not. The initial interpretation is a plausible one, however, not only because of Professor Cushman's language but because the doctrine that internal security is a matter of exclusively federal concern has recently won some measure of judicial acceptance.¹

At the risk of seeming to do battle with a nonexistent adversary of my own imagining, I persist in devoting a portion of this discussion to the mistakenly inferred thesis not only because my reading of the preface conditioned my thinking throughout, but also because it may be similarly misread by others, to the impairment of the book's effectiveness. In addition, the argument that the federal government has pre-empted the control of subversive activities seems likely to precipitate wide discussion of an issue on which this book affords important evidence.

Interpreted as it was, Professor Cushman's thesis aroused in this reviewer acute skepticism and a determination to examine critically each item of evidence adduced in its support. It would be natural, perhaps, for those who deprecate the excesses and abuses of antisubversive programs to wish to employ every potential weapon in the legal arsenal in their campaign to protect the rights of the individual, and to confine the threat to a national arena on which the spotlight of criticism could be focused. But the tactic of challenging, on federalist grounds, the authority of the states to concern themselves with the problem suggests an unfortunate parallel with the legal maneuvering by which the development of economic controls was so long obstructed—the opposition of one set of constitutional doctrines to state control, and of another to federal. It is reminiscent of the insincerity which marked the unsuccessful effort of unions to invoke, against legislation outlawing the closed shop and the union shop, the same constitutional arguments which had once been used to strike down legislation favorable to the cause of organized labor.² The appearance of such a book as this, dedicated to such a proposition, would be a matter of regret to those who hope to hasten the day when restraint, procedural integrity, and solicitude for individual rights will replace the current carnival of hysteria in the investigation and punishment of subversion. The effort to preserve freedom against the incursions associated with loyalty and security programs must prevail on the merits, through a renewed understanding by the American people and their courts and legislatures of the worth of the ideals involved and of the dangers

¹ Levin, J., dissenting, in *Albertson v. Millard*, 106 F. Supp. 635, 647 (D.C. Mich., 1952).

² *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, 335 U.S. 525, 534-37 (1949).

which are typically presented; if it cannot prevail on the merits, it is already lost. Resort to a jurisdictional argument is likely to appear as an attempt to create a diversion, and thus to evoke unwarranted doubts about the case to be made on the merits. Moreover, such a tactic is almost certainly foredoomed to futility. The political capital to be made out of investigations and sponsorship of security legislation, not to mention the legitimate interest that may be asserted by state and local governments, insures that activity in this area will not be voluntarily relinquished by state and local officials while the subject remains one of national concern. And the present status of constitutional doctrine³ makes it in the last degree unlikely that the Supreme Court will hold that state action in this area is proscribed as incompatible with the national interest in any circumstances short of an express congressional declaration to that effect. Not only is any such declaration unlikely; it might very well be unwise. It may be that Mr. Justice Holmes' conception of the states as laboratories for the study of social problems has as much validity in this area as in that of economic regulation, however painful the process of experiment may be.

But these digressive thoughts may now be put aside. I shall not return to them except to indicate the extent to which the unfortunate phrasing in the preface misleads one as to the nature of the book and to comment briefly at a later point on the evidence which the book contains as to the relative merits of state and national programs. For the book is quite definitely *not* devoted to the jurisdictional thesis that the preface suggests, and it becomes clear belatedly that Professor Cushman probably had no intention of suggesting that as its thesis. Beyond any question whatever, and with outstanding effectiveness, each of the chapters in the book deals directly and straightforwardly with the merits of various state and local programs, without the slightest suggestion that they should be judged by standards different from those applied to federal activity directed to the same ends.

The book consists of seven chapters, each of the first six being a study of investigations or legislation in one of the states which have been particularly active in the attempt to suppress subversion. These chapters are: "CALIFORNIA: Regulation and Investigation of Subversive Activities," by Edward L. Barrett, Jr., Professor of Law at the University of California, Berkeley; "ILLINOIS: The Broyles Commission," by E. Houston Harsha, Research Assistant at the University of Chicago Law School when the chapter was written; "MARYLAND: The Ober Anti-Communist Law," by William B. Prendergast, Assistant Professor of Government in the United States Naval Academy; "MICHIGAN: State and Local Attack on Subversion," by Robert J. Mowitz, Assistant Professor of Public Administration, Wayne University; "NEW YORK: A Generation of Legislative Alarm," by Lawrence W. Chamberlain, Dean of Columbia College; and "WASHINGTON: The Canwell Committee," by Vern Countryman, Associate Professor of Law, Yale University. Prior to the publication of this volume, Cornell University had published, as full-length

³ As indicated by such cases as *Prudential Ins. Co. v. Benjamin*, 328 U.S. 409 (1946).

monographs, the complete studies made of antsubversive activity in California, New York, and Washington.⁴ The mystery of why this book should contain "condensations" of three others already published as part of the same research project, never explained in this volume, has been solved for me by Professor Barrett: the original plan contemplated a volume of this sort; the determination by the authors and editors that programs in these three states merited more extended treatment was an outgrowth of the preparation of these materials.

In the seventh chapter, Professor Walter Gellhorn of the Law School of Columbia University offers a "general view" and analysis of developments in the six states and, in addition, refers briefly to experience in several others, including Massachusetts, Texas, New Hampshire, Indiana, Arizona, and New Jersey.

Probably no other reader, lacking the vigilance which was inspired by my misapprehension, could recall any particular reference in this book to the idea that the division of responsibility between the state and national governments of itself makes it inappropriate for the states to concern themselves with subversion. There are, in fact, only three such references discoverable by assiduous reading: (1) Professor Prendergast, observing that Maryland's Ober Act may afford protection against espionage and sabotage, adds: "Yet doubt remains as to whether state or national agencies are better equipped to provide such protection" (p. 182). He makes no attempt to adduce the considerations pro and con, but his frequent commendations of the ability and sincerity of the commission which drafted the law and of the relatively notable attention which that commission gave to procedural safeguards (pp. 144, 145, 147, 153) indicate that, for him, the doubt is not a basic one. (2) Professor Mowitz records, without evaluation, the fact that Attorney General Black considered Michigan's Callahan Act to be "an unconstitutional invasion by the state of powers exclusively held by Congress" (p. 193). (3) Professor Gellhorn notes the report of the New Hampshire commission to the effect that "exposure of communist activities was a job for a national rather than a local police organization," but his comments are directed to the apparent lack of urgency of the subversive problem in that state (p. 371). These isolated, obscure, and incidental references make it thoroughly clear that Professor Cushman could not have meant what he seems to say in the preface.

A reviewer, utilizing stray bits of information which were not appreciated, might indeed come to the aid of the authors if he felt that they had failed to carry out an assignment to condemn the usurpation implicit in state action against subversion. It seems to me that the limits of state concern were overstepped when California's Tenney Committee delved into charges that a German alien used improper influence to obtain contracts for the construction of secret installations at Pacific bases in the course of the war (p. 9), and per-

⁴ Barrett, *The Tenney Committee* (1951); Chamberlain, *Loyalty and Legislative Action* (1951); Countryman, *Un-American Activities in the State of Washington* (1951).

haps when a bill introduced in the Illinois legislature sought to penalize certain uses of the United States mails (p. 59). The authors, however, do not attempt to make anything of these incidents.

And on the positive side, this collection of essays abounds in evidence that the authors, while concurring in the general feeling that additional antismersion legislation is redundant in view of laws already on the books and that legislative investigations do more harm than good, recognize: (1) that the communist type of disloyalty poses a genuine security problem; (2) that the state and local governments have entirely legitimate interests and responsibilities which make this problem theirs no less than that of the federal government; and (3) that in the experience of state and local governments, as they have attempted to deal with the problem, there are lessons to be drawn from precedents both horrible and exemplary for the guidance of future inquiries at whatever level of government.

One may indeed smile upon learning that the Tenney Committee concerned itself with what it regarded as a plot "to destroy not only Fairfax [population 2,198] and California, but the United States of America as well" (p. 18); but no one, and certainly no contributor to this volume, shows any disposition to laugh off the considered statement by Professor Mowitz that "[t]here can be little argument with the contention that a municipality has not only the right but also the responsibility to assure that the staffing of public agencies will be such that the public health and safety will not be endangered" (p. 227). There is no challenge to the standing of the states in Professor Gellhorn's view of the book's purpose: "Reviewing the record of state action may help us to discover whether emotion is supplanting reason in matters of urgent national concern" (p. 359). The same question is the one most frequently asked about similar national action. And the editor explicitly recognizes the validity of state concern when he says: "What the states need now, generally speaking, is not an ever-growing body of laws to deal with supposedly subversive persons or beliefs. For their legitimate protection they need merely to enforce the already large body of laws that concentrate on actions instead of opinions and associations" (pp. 391-392). Dean Chamberlain (p. 231) and Professor Prendergast (pp. 171, 177) emphasize the antiquity and the prevalence of local perturbation over disloyalty; none of the contributors is so naïve as to suppose that practices so deeply rooted are to be talked out of existence by harping on the technicalities of dualism in government.

It is hardly surprising that the record of state action yields the most incredible extremes of irrationality to be found in any account of antismersion effort. A bill introduced in the New York legislature in the thirties sought to secure the sovereignty of that state by requiring that all school buses be painted red, white, and blue (pp. 242, 368). It is a pity that we are not told the outcome of, nor even the press reaction to, the Detroit police commissioner's bright idea of setting up a loyalty program for newspaper reporters (p. 209). Perhaps the most

ominous development is the compilation of lists of persons proscribed as book reviewers (p. 300). Of far deeper significance than these aberrations, of course, is the shocking array of abuses that seem more normal because they have come to be expected as typical: the making of character-blighting "findings" on the basis of rumor, surmise, and opinion; the denial of the right to cross-examine; the denial of the right to counsel; the attempted outlawry of suspect individuals; the emphasis on beliefs and associations, with its tendency to intimidate and to suppress inquiry. But such abuses are not uniquely found in state and local activity. They are the common characteristics of modern loyalty and security programs in general, and are treated by the authors as such.

The treatment is not that of outright condemnation. Even where a procedural device has on the whole worked badly in state experience it is carefully examined with a view to determining whether it might be made to work well. Thus Dean Chamberlain considers sympathetically, and at considerable length, the Rapp-Coudert Committee's practice of examining suspects privately before permitting their names to be mentioned in public hearings, viewing this practice as evidence of the committee's "honest effort to conduct their inquiry on a high level and to avoid smearing innocent persons by making sure of their facts before pinning the communist label on anyone" (p. 261).

There are numerous instances in which state proceedings have served a relatively useful purpose, either by affording an opportunity for clarification of the issues typically raised by such programs or by establishing exemplary procedures. Repeatedly, and often successfully, sponsors of security programs seek to make it appear that the only issue is communism versus patriotism. California provided a setting in which eminently trustworthy people were able to explode that canard by the courageous statement of legitimate grounds for opposition (p. 365). Minority members of Illinois' Broyles Commission wrote dissenting reports sharply criticizing the tactics of the majority (pp. 131 ff.), and the hearings conducted by that Commission gave rise to President Hutchins' dramatically effective statement of the academic position (pp. 95 ff.). Professor Prendergast's commendation of the Ober Commission has already been noted; in addition, Dean Chamberlain refers to the "unexceptionable procedural guarantees" of New York's Devany Law (p. 246), and Professor Gellhorn emphasizes the unsensational restraint which characterized the work of the District of Columbia Loyalty Committee (p. 390). Finally, there are at least two instances of recognition that the states have the opportunity to do something genuinely constructive about disaffection (pp. 280-81, 389); in the second of these, Arizona emerges as the only jurisdiction to have adopted the positive approach of establishing a committee "to strengthen . . . American ideals . . . against the encroachment of subversive and un-American propaganda."

Professor Barrett's book on the Tenney Committee is so generally known that the nature of his contribution to this volume will be familiar to most read-

ers. It is characterized by its attention to the revealing personality and political factors which led to the establishment of the California committee, and by its painstaking exposition of the defects in the committee's tactics.

The first part of Mr. Harsha's account of the Broyles Commission in Illinois is marred, it seems to me, by his excessive preoccupation with the shortcomings of the commission's report in matters of grammar and style. A reviewer disposed to adopt the same approach to this book could point out to presumably horrified purists editorial peccadilloes (such as those on pp. 107, 184, 222, 232, 247, and 359) which, given the difference between the prevailing literary standards in university presses and state legislatures, would not be entirely devoid of comparability. The most common reaction to this type of criticism, however, is likely to be a devout wish that the critic would come to the point. This Mr. Harsha does after a while, and quite effectively.

The service academies are not generally regarded in other institutions of higher learning as harbors of outstanding scholarship, especially in the area of controversial social problems. For this reason it is a special pleasure to note that Professor Prendergast's chapter on Maryland is competent, straightforward, temperate, and objective, even if it does come out of Nazareth. The studies of Michigan and New York by Professor Mowitz and Dean Chamberlain are careful and incisive evaluations, Dean Chamberlain's historical perspective being somewhat longer than that of the other contributors. Professor Countryman's technique is rather different from that of the others. He traces in meticulous detail the investigations of the Canwell Committee, piling one item of evidence on another until the reader is at the point of protesting that he can hardly be expected to substitute his judgment for that of the committee on a disputed issue of fact, and that if he did it would prove nothing relevant to the basic functioning of the committee; then suddenly Professor Countryman turns this painstaking examination of the record into the foundation for a devastating exposure of the committee's methods and ethics.

Professor Gellhorn's "general view" is a moving and persuasive summation of the dangers that lurk in loyalty and security programs. The sponsors of such programs are notoriously indifferent to the problem of defining "un-Americanism"; when they attempt definition at all they usually get into difficulty. Their difficulties would be eased by a reading of this chapter, for there are few more eloquent statements of the American faith. This is the faith that democratic institutions are strong and viable, that they can survive discussion and inquiry, that our youth deserve education rather than indoctrination, and that established safeguards for the preservation of individual rights are not to be jettisoned because of periodically recurring fears. The legislators may never discover just what they mean by un-Americanism, but in Professor Gellhorn's statement they can rediscover the meaning of Americanism.

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