

1961

## Book Reviews

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## BOOKS REVIEWED

**The United States in World Affairs, 1960.** Richard P. Stebbins. New York: Harper & Brothers. 1961. Pp. xii, 436. \$6.00.

Here is a functional volume fulfilling its aim "to present a concise record and interpretation of the international activities of the United States during the calendar year 1960." (p. vii.) Published for the Council on Foreign Relations, it continues an annual series published for three decades, except for the war period, 1941-1944. Richard P. Stebbins, its author, a Harvard Ph.D. and former State Department official, has contributed ten other volumes to the series.<sup>1</sup>

The book attempts no major historical judgments, nor could it do so at such short range. But, in its arrangement of events under major chapter titles and subject headings, it tightens up the relationship of these events to a common subject and avoids, thereby, becoming a digest or index of the foreign policy news of 1960. Such chapter headings as "The Year of Africa" and "The World Society" and subject headings under each chapter, as "The Algerian Hemorrhage" and "The Assembly of Humanity" (the latter referring to the September 1960 session of the United Nations General Assembly), illustrate this point. The sweep of history in 1960 is epitomized in the juxtaposition of the grand designs of the United States and of the Union of Soviet Socialist Republics. President Eisenhower, speaking before the General Assembly of the United Nations, expressed the position of the United States as seeking as a goal, a world community, rather than seeking to attain a superstate above all nations.<sup>2</sup> "The United Nations," Mr. Eisenhower declared on this occasion, "is available to mankind to help it create just such a community. It has accomplished what no nation singly, or any limited group of nations, could have accomplished. It has become the forum of all people and the structure about which they can center their joint endeavors to create a better future for our world." (pp. 336-337.) For the U.S.S.R. its position was expressed by the affirmation of Premier Khrushchev, in the author's words: "The ultimate goal of Soviet policy, to which the entire life of the Soviet Union and its satellites had been consistently subordinated, had been proclaimed again and again to be nothing less than the extension of the Communist system to the whole of human society." (p. 61.)

The year 1960 is distinguished not only as the year of the U-2 blow up of the big four Paris summit meeting in June; the year "when Japanese street mobs prevented an American President from visiting their capital"; (p. 1); the year when the smoldering "cold war" seemed about to burst into flame; the year of the election of the "New Frontier" President, Kennedy; but also as the year of the hundredth state—the year when the admission of Mauritania as the one hundredth member to the United Nations was vetoed by the Soviet Union; the year when, nevertheless, by the admission of new members the balance of membership shifted to the ex-colonial powers with the Afro-Asian bloc holding about half the seats.

The verdict on the year is contained in the fact that a year that began with

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1. Mr. Stebbins wrote for the Council on Foreign Relations, published by Harper & Brothers, New York: *United States In World Affairs, 1949*, through *United States In World Affairs, 1954*, and *United States In World Affairs, 1956*, through *United States In World Affairs, 1959*.

2. N.Y. Times, Sept. 23, 1960, p. 14, cols. 1-8.

"what might have been a promising opportunity to begin the process of East-West accommodation which many observers believed to be the only alternative to an eventual nuclear catastrophe . . ." (p. 2), was characterized by Khrushchev's "unremitting efforts to expand the frontiers of Communism [which] dominated the day-to-day course of international relations in 1960 as in earlier years." (p. 4.) In line with the theme that "'our enormous capacity to act imposes upon us a responsibility to make history, and to take a large part in the shaping of events . . .,'" (p. 14) we did or tried to do just that in Laos, Cuba, Berlin, Japan, Europe, and Latin America with varying degrees of success—and the book spells this out very clearly.

It is a good book, very useful to the student and teacher and to those who would be well informed on United States foreign policy in 1960. Its notes, index, maps and, chronology of world events enhance such usefulness. It is alert and readable and even presents some good illustrative cartoons to break up the text.

While the book is too contemporary to give broad historical judgments, it has some excellent editorial comment. Specifically, it is my feeling that the thrust of the United States capability to lead for peace and to affect events through the massive means of its private economy, communications, technology, and spiritual strength is not realized or portrayed adequately. However, considering the book's scope and purpose, it richly deserves a hearty "well done."

JACOB K. JAVITS\*

**The Policy Machine.** Robert Ellsworth Elder. Syracuse: Syracuse University Press. 1960. Pp. xi, 238. \$4.50.

This book in many respects could have been called "Inside the State Department." The author spent a due amount of time exploring and interviewing in the offices and corridors of many of the buildings in Washington where our foreign affairs are administered. He studied at length how United States foreign policy is made, and he has set it forth with a "plethora of detail" (p. v)—giving much "solid fact," (p. v) but also including the time certain people sit down at their desks. Perhaps it is misleading to include any of that kind of detail. Too many people already believe that good policies automatically grow out of a well constructed and oiled machine. The public and too often the administrators become excessively pre-occupied with the routine of an agency, the regularity of staff meetings, the composition and procedures of interdepartmental coordinating committees, the routing of staff studies, and even "the typical arrangements for staff meetings throughout the Department and government." (p. 80.) The truth is that able people, possessing the essential qualities of good judgment, imagination, adequate training and experience, and some political awareness tempered by loyalty to the job transcending personal ambition, are the really priceless ingredient in successful government administration. Mr. Elder gives reason to believe that he recognizes this by starting his chapter on personnel with the assertion that "an essential ingredient in the future foreign policy mechanism, as in any organization, will be competent people." (p. 181.)

The book certainly contains much intelligent analysis of the process of making foreign policy, including the organizational structure of the "machine" and the methods of selecting the people who staff it. The author also makes some recom-

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mendations for the future that are sensible and sound. His major proposal, which he labels a "fourth dimension" in the policy making complex, is to create in the mechanism "an appendage which could provide seminal ideas and a continuing challenge to the basic assumptions, goals, and implementations of American foreign policy." (p. 163.) This appendage would be a Social Research Board in the National Security Council structure, backstopped in the State Department, principally by "a special Office of Social and Behavioral Research," (p. 179) staffed chiefly by academic personnel trained in various social sciences, plus some journalists. This is a very appealing idea to anyone who has seen the picture from both sides: the harried government policy maker, armed with a general liberal education and full awareness of the issues of the day, but with no time to seek out the latest research that would help solve the problems on his desk; and the scholar, bursting with the results of the most up-to-date penetrating studies in the field and frustrated because no one in authority asks for his views or has time to read his reports. A formal regular means of bringing these two together would certainly help to lubricate the policy machine, although a title less redolent of the ivory tower would probably make it a better political possibility.

It could be wished that Mr. Elder, in his descriptions, analyses, and recommendations, had covered a wider area of the field. If he had, his blueprints would not have left an unsatisfied feeling that some important points still needed treatment if a completed machine were to be described. He rightly gives the primary place in policy formulation to the desk officer. His descriptions and analyses of the researchers and policy planners are also in good perspective. His treatment of the area of public opinion, in which he wisely includes congressional liaison, is very good. In his preface, however, he apologizes for "only passing mention" (p. v) of such areas as economic and international organization affairs. The omission is indeed unfortunate, for the part played in policy making by economics, multilateral diplomacy, and legal considerations is highly significant in these days. Would one adequately understand the machine called an automobile if its description said nothing about brakes, battery, or steering wheel?

The author's expressed intention was to make the mechanism of the State Department "come alive" for the lay reader or student. He has, however, succeeded to a greater extent for those who have some sophistication in international relations. The newcomer in the field would be helped by concrete examples of the working of the machine and its parts in the formulation of specific policies. This was an important factor in the success of the books by Harold Stein<sup>1</sup> and Richard Neustadt<sup>2</sup> on the making and enforcing of high policy in the government.

Mr. Elder's specific conclusions on how the process could be improved deserve careful consideration. Some have appeared elsewhere. As he points out, his chapter on personnel in foreign service work formed the basis of a similar passage in one of the series of very valuable studies prepared by various groups of scholars for the Senate Foreign Relations Committee. His own recommendations here include a more realistic system of examination for applicants and better delegation of authority. For good reasons, he doubts the value of a Foreign Service Academy, and he describes the formidable obstacles to creating a unified service for overseas employees of State, the International Cooperation Administration, and the United States Information Agency. The difficulties of operating programs requiring large

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1. E.g., Stein, *Public Administration and Policy Development* (1952).

2. Neustadt, *Presidential Power, The Politics of Leadership* (1960).

financial outlays under the traditional governmental budget and appropriation procedures are well described. Perhaps the operational reforms that the author advocates in this field would improve matters, but recent events in Congress give little hope for radical changes. Here again the best chance for improvement lies in an improved Congress, one in which more of the members better understand the needs and the problem. Then they would be more likely to improve their own machinery for handling complex international programs; perhaps combining the present series of four hearings for each program into a single hearing, and then agreeing to appropriations with longer than single year terms for obligation and expenditure. Mr. Elder also was led to doubt that the Bureau of the Budget and individual agency "budget shops" have been "adequately staffed or organized" to meet the needs of current foreign policies. The performance of these administrative offices, however, unhappily reflects their position—squeezed between the motive forces of ambitious policy makers and the immovability of a suspicious Congress. They would respond quickly enough to a more liberal receptivity on Capitol Hill.

All this is only repeating the principle that Mr. Elder applied to the problem of personnel—that the foreign policy mechanism needs "competent people" in its legislative end as well as in the executive. If this principle is accepted, there need be no great concern whether the President relies heavily on the National Security Council's policy papers for every major decision, as did President Eisenhower, or whether he relegates the N.S.C. to more of a background role, as President Kennedy has started to do. The really crucial issue is how a well staffed State Department can find the resources of power needed to make its policy stick. Of course, the President must be in accord; as President Truman was once reported to have said: "If I don't agree with it, it isn't policy." But the great problem of our nation has been the inconsistencies between our declared policies and our performances, whether the President or the Secretary of State has proclaimed the policies. If our spokesmen plead for freedom of people to govern themselves, we must not weasel on the principle because the resulting independence of colonies would have a heavy impact on our military allies. If we oppose Soviet interference in self-government, we must ourselves accept, at least formally, the choice, even of obnoxious leaders, made by the people of sovereign nations in our own good neighborhood. When we advocate more freedom of trade, our negotiators must not be sent forth without power to make any concessions in our own barriers. The problem, then, becomes not so much how a good policy is made, but how to keep it from foundering on the reefs of internal politics and national predilections. This is why the mechanisms described in Mr. Elder's chapters on legislative liaison and public information may deal with the keys to power and therefore with the most vital parts of the policy machine, and why his proposals there are most worthy of study, even more than his interesting "fourth dimension."

MICHAEL H. CARDOZO\*

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*The Foreign Tax Credit.* Elisabeth A. Owens. Cambridge: The Law School of Harvard University. 1961. Pp. xxxi, 634. \$20.00.

"For every evil under the sun,  
There is a remedy, or there is none.  
If there be one, try and find it;  
If there be none, never mind it."<sup>1</sup>

President Kennedy's tax message to the Eighty-seventh Congress called for a critical examination of "certain features of our tax system which, in conjunction with the tax system of other countries, consistently favor U.S. private investment abroad compared with investment in our own economy."<sup>2</sup> Miss Owens' timely book is a meticulous study of one of the most important features of our system of taxation of foreign source income—the foreign tax credit.

The foreign tax credit provisions of our Code<sup>3</sup> represent a unilateral measure on the part of the United States to eliminate international double taxation to a substantial degree. Initially enacted by Congress in 1918 to alleviate the burden on United States taxpayers caused by the high rates imposed by certain foreign countries,<sup>4</sup> the credit has grown to represent "the principal method of accommodation to be used in . . . international tax relations."<sup>5</sup>

At a time when American manufacturers are establishing overseas operations in an attempt to minimize fetters on foreign trade such as tariff barriers, import quotas, currency restrictions, and licensing requirements, the federal tax impact on foreign source income becomes increasingly more important. Miss Owens' intensive and analytical study of the foreign tax credit places these code sections in sharp focus.

The format of the book not only allows the author to give detailed analysis to the five relevant sections of the Code, pertinent cases, revenue rulings, and legislative history, but permits her own carefully delineated views to be expressed regarding "what ought to be." Source material is separately compiled in an appendix, listing by country, all decisions concerning qualification of foreign taxes. There are also exhaustive tables of cases, rulings, code sections, regulations, forms, treaties, and legislative history.<sup>6</sup> Additionally, the author presents the reader with a useful five page bibliography of books, monographs, and reports on foreign taxation.

Chapter Two, covering sections 901 and 903 of the Code goes to the heart of the foreign tax credit field—identification of creditable foreign taxes. Since only income, war profits, and excess profits taxes or those paid in lieu thereof are creditable under sections 901 and 903,<sup>7</sup> and these terms are interpreted within United States concepts of taxation, obvious problems of definition exist. Miss Owens tries to overcome these problems through analysis of the cases and rulings relating to foreign levies to reach the true characteristics of the foreign tax. In attempting to do so, the author points out that much of the law concerning the qualification of foreign taxes for credit is found in revenue rulings, which are

1. One Thousand Poems For Children 7 (Sechrist ed. 1946).

2. H.R. Doc. No. 140, 87th Cong., 1st Sess. 67 (1961).

3. Int. Rev. Code of 1954, §§ 901-05.

4. H.R. Rep. No. 767, 65th Cong., 2d Sess. 11 (1918).

5. Surrey, Foreword to Owens, *The Foreign Tax Credit* at vii-viii (1961).

6. Unfortunately, these excellent tables of reference are geared to an ungainly numbering system.

factually brief, lacking in legal analysis, and which fail to give a thorough rationale for their holdings.<sup>7</sup> (p. 31 n. 4.)

The author handles separately, problems arising under sections 901 and 902 as to who is the appropriate taxpayer to claim the credit. This issue is covered at length in a separate chapter.

Chapter three concerns the method of calculating an indirect credit for taxes paid by the subsidiaries of domestic corporations under section 902 as well as the prerequisite for claiming the credit. Miss Owens' evaluation of section 902(a) (providing for a credit only for that portion of the foreign tax paid on "accumulated profits"), and 902(d) (providing for a credit when royalties are received in lieu of dividends from a foreign subsidiary), is particularly timely and provocative in view of the Administration's recommendation for "grossing up" and repeal of the foreign tax credit on royalty dividends.<sup>8</sup>

Operating basically within section 904, chapter four treats the limitations on the amount of the tax credit and the calculations attendant to such limitations. This chapter brings into play the basic option offered taxpayers, to credit or deduct the foreign tax, and discusses in detail the relative advantages and disadvantages flowing from the election.

The remaining section of the Code relating to foreign tax credit, section 905, is covered in chapter five. Here problems relating to the proper year in which the credit is to be claimed are covered. One of the basic realities of foreign investments—that foreign taxes are normally paid in foreign currency which ultimately must be converted into United States dollars—is examined in chapter seven. Although perhaps more prosaic than preceding chapters, problems relating to conversion are nonetheless one of the facts of economic life abroad.

Miscellaneous aspects of the foreign tax credit, running the gamut from the status of a resident alien to claim the credit to the administrative requirements for claiming the credit, are covered in chapter eight.

In her concluding chapter, Miss Owens discusses policy issues involved in taxation of foreign source income and the credit system. She points out business interests engaged in overseas operations that consider the tax credit system "the very least the government could do" (p. 591,) should recognize that the United States Government unilaterally assumes "almost the entire responsibility of relieving double taxation of its nationals, and at a cost in revenue which could be afforded only by a prosperous country with a particularly strong interest in encouraging the growth of international trade and investment." (p. 591.) In almost prophetic terms she sounds a warning to the "cohesive group" who are the beneficiaries of the largess of our Congress.

Miss Owens, under the auspices of Harvard Law School's International Program in Taxation, has produced an outstanding piece of scholarship for which all interested in the subject matter can indeed be thankful. This volume stands alone as an authoritative source of guidance and understanding in a troublesome area of the law.

MITCHELL ROGOVIN\*

7. The Revenue Service can take some comfort that it has not been singled out alone as the sole recipient of Miss Owens' criticism. The courts, to a lesser degree, perhaps because they have spoken fewer times, are also chastised. More realistically the author does, however, point out the difficulty in evaluating conflicting decisions lies in the basic lack of a standard of reference, i.e., the absence of precision in the term "the United States concept of an income tax" as used as a measure of a foreign tax. (p. 68.)

8. See Hearings Before the House Committee on Ways and Means on the President's 1961 Tax Message, 87th Cong., 1st Sess. 266-67 (1961).

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