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## Book Reviews

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## BOOKS REVIEWED

**Status and Kinship in the Higher Civil Service: Standards of Selection in the Administrations of John Adams, Thomas Jefferson, and Andrew Jackson.** By Sidney H. Aronson. Cambridge: Harvard University Press. 1964. Pp. xiv, 274. \$5.95.

**Federal Conflict of Interest Law.** By Bayless Manning. Cambridge: Harvard University Press. 1964. Pp. xviii, 285. \$6.95.

One of our shaggy forebears, ages ago, surprised himself by the simultaneous discovery of three separate but related truths. The first was that bison could be more efficiently hunted by ten men acting in concert than by ten individuals acting alone. The second was that someone would have to direct the efforts of the ten-man unit. The third, and most important, revelation was that the creature<sup>1</sup> who assumed the task of directing his fellows would necessarily be enabled to assign to himself the least onerous duties and to claim for himself the richest share of the meat.

The anonymous proto-human who first had all these thoughts has been unfairly relegated in the popular imagination to a position in cultural history below that of the lazy dray who invented the inclined plane. His place should be much higher. It was he who discovered the basic principles of government. And when he disclosed the first and second ideas to his fellows<sup>2</sup> but neglected to mention the third, he became the first working politician.

From that beginning governments of all kinds have proliferated. In spite of differences in form, they have all remained to some degree faithful to the basic ideals of that remarkable anthropoid.

In our own country, where the articulated purpose of government is in some fashion to promote the common weal, there has always been a tension between government's need to recruit able servants and its inability to pay those whom it employs at levels commensurate with what private enterprise offers to men of talent. If the individual is rich enough, the paltriness of government pay may be an inducement, rather than an objection, to public service: *noblesse oblige* is, after all, a precept that offers great satisfaction to those who can afford to follow it. For others, even government pay standards are munificent compared with their own potential earning capacity: sometimes this is true because the individual belongs to a group that is subjected in the business world to job discrimination; frequently the individual is just not talented enough to do particularly well on his own.<sup>3</sup> Some people—young lawyers in droves—enter government service as a kind of apprenticeship in their profession. Others go to work for the government out of vague feelings that they will be doing Something Important or because of the aura of glamour that surrounds the seat of power. And then, infrequently but nevertheless all too often, there are those who take government jobs primarily because of the chances they offer for personal enrichment.

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1. It is uncertain if our hero were homo sapiens or some earlier form of man or anthropoid. Because there is no satisfying authority on this question—apart from fundamentalist readings of the Old Testament—I have chosen the prudent course of identifying him merely as a "creature." See note 2 *infra*.

2. By what grunts or signs this communication was accomplished will be, I trust, the subject of numerous doctoral dissertations.

3. Andrew Jackson appointed to a high position in his government an individual who had previously worked as a "cattle drover," presumably an unglamorous cowboy. Aronson, *Status and Kinship in the Higher Civil Service* 92 (1964). In the days of comic exasperation that followed Russia's launching of Sputnik I, someone started the rumor that scientists at Cape Canaveral had developed a rocket that could neither be made to work nor could ever be fired. Its name, of course, was the Civil Servant.

In the glorious early days of the Republic, one gathers from the Aronson book, commerce in jobs and influence was a good deal more unabashed than it is today. It did not, we surmise, seem odd for John Marshall to have engaged in real estate speculation concerning a vast tract of patent lands in Virginia.<sup>4</sup> For Andrew Jackson the quality of "honesty" which, along with "probity and capability" was said to be the "sole and exclusive test" for government office,<sup>5</sup> probably meant no more than disapproval of public officials who reach into the till *above* the elbows.

There is a kind of history whose greatest service is to make us aware of the importance of the *unhistorical* fact. If, for example, Benjamin Franklin had actually been as tediously full of dull maxims as grammar school textbooks make him out to be, his mission to France would likely have failed, and with that perhaps the American Revolution as well. His contemporaries—those awesome figures in powdered wigs—were for the most part hard riding country gentlemen; and ties of blood or friendship could often bridge the sharpest doctrinal cleavage. The ways in which affairs of state or of private interest (for many, the terms seemed to have been interchangeable) were resolved at dinners or over bottles of port is a fascinating subject, worthy of great pains.

Unfortunately, Sidney Aronson is not Edith Wharton. *Status and Kinship in the Higher Civil Service*, apparently a remake of the author's Ph.D. dissertation,<sup>6</sup> is one of those sociological tracts that force the reader to spend half his time mastering a jargon that is solemnly referred to as "methodology" and the rest in wading through a morass of statistics organized for the purpose of proving (1) the correctness of the methodology and (2) that everyone but the author has always misconstrued the raw data.

The book's principal thesis seems to be that, although Jackson's administration was more democratic in recruitment than his predecessors', it was not as democratic as contemporary critics would have us believe, and did not, in fact, bear out what Aronson sneers at as "the traditional interpretation" that hordes of semiliterate job-seekers were given the run of the White House.<sup>7</sup> In support of this contention he examines the backgrounds of various "elite officers" (cabinet members, federal judges, and other policy-level presidential appointees) and comes up with statistics that assertedly show that in many respects the Jacksonians were not terribly different, as a group, from the Adams appointees.

This involves counting the same noses in fifty different ways—which, because of an absence of critical discrimination in establishing many of the categories involved in the statistical analysis, produces results that do not seem terribly persuasive. Henry Adams would have been amused, say, by Aronson's notion that the aristocracies of Boston and Kentucky may somehow be treated as fungible. I also find charm in this dictum:

The relatively large proportion of former teachers challenges statements which impugn the literacy of Jacksonians. That so many of Jackson's positions were filled by former newspaper men also attests to the literacy of his elite.<sup>8</sup>

The mind which can equate literacy with schoolmarm English or newspaperese finds no difficulty, in speaking of the educational attainments of appointees under the various administrations, in equating a degree from Harvard or Yale with one from a backwoods college whose very name evokes terror.<sup>9</sup>

4. Aronson, *op. cit.* supra note 3, at 94.

5. *Id.* at 14-15.

6. *Id.* at 253 n.12.

7. *Id.* at 117 and 259 n.72.

8. *Id.* at 97-98.

9. *Id.* at 131. Founded in 1789, Transylvania U. graduated only thirteen students in the years 1801-1810. *Id.* at 122. Seven of Jackson's elite appointees were graduates of Transylvania U.—most, mirabile, of its law school. *Id.* at 137. The numbers provided by Mr.

Possibly Mr. Aronson did not intend to convey the impressions that I have taken away from his book. It may be that a reader more accustomed to the turgidity of sociological discourse would make better sense of the book than I have, for I must confess that halfway through I gave up trying to puzzle out the tables and charts which the book's prose seems intended to illustrate. It may thus be that I have missed half the book's substance. Mr. Aronson would do well to consider writing his next book in the English language.

As Aronson has wrung dullness from what should be a fascinating subject, Bayless Manning has performed the equally improbable feat of making a book that is primarily *explication de texte* of two relatively brief statutes not only a valuable treatise on the limited area of law with which it deals, but actually enjoyable reading.

Effective January 21, 1963 a complete overhaul of federal law with regard to conflicts of interest was enacted.<sup>10</sup> The earlier laws, a hand-me-down from Reconstruction and early twentieth-century thinking, were the products not only of slipshod draftsmanship but as well of too-easy thinking about the relation between the government and the different kinds of people who, in one way or another, come into its employ. Professor Manning, who had served as a member of a panel appointed by President Kennedy to consider the issue of conflict of interest<sup>11</sup> and had been in large measure responsible for the 1960 report on *Conflict of Interest and Federal Service* of the Association of the Bar of the City of New York,<sup>12</sup> is singularly well qualified to discuss the relationship between the old law and the new. If he at times seems a bit harsh when speaking about the superseded legislation and a trifle doting when talking about the new, it is perhaps a matter of the critic's divine acerbity struggling with a form of parental pride.

It is plain from its text that the new conflict of interest laws are likely to have a profound effect upon business in general and particularly upon the practice of law. Lawyers will have increasingly to advise their clients (and themselves) upon how to act in the penumbra of government employment, and for years to come Professor Manning's book should be the standard authority on the questions that are likely to be asked.

For those to whom the potential conflict of interest problem is of no immediate concern, the book offers at very least the same pleasures that one finds in any *explication de texte*. Also, delightful historical curiosities abound. District of Columbia notaries public, for example, have been held to be "officers of the United States" and thus as fully subject as cabinet members to section 281 of the old law and, presumably, to its successor, section 203.<sup>13</sup> One unnecessary provision of the new law is ruefully described as "a remembered solution to an extinct . . . problem."<sup>14</sup>

Unlike the 1960 report of the Association of the Bar, Professor Manning's book is "not primarily critical in character" but rather is designed as a handbook "for working lawyers and public administrators."<sup>15</sup> Thus Manning carefully notes that whenever

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Aronson are significant; thirteen need not be explained and, as everyone knows, there are exactly seven letters in the name Dracula.

10. 18 U.S.C. §§ 201-218 (Supp. V, 1964).

11. Manning, *Federal Conflict of Interest Law 5* (1964). At the time the author served on the President's Advisory Panel he was a member of the faculty of Yale Law School. If his service on the Panel could be held to have made him a "Government official or employee" and his salary from Yale could be deemed somehow "in connection" with his service on the Panel, a too literal reading of the Act of June 25, 1948, ch. 645, § 1914, 62 Stat. 793, superseded by the new legislation, might have made him amenable to penal sanctions. Caveat professor.

12. *Conflict of Interest and Federal Service* was published by the Harvard University Press in 1960.

13. Manning, *op. cit. supra* note 11, at 19, 22.

14. *Id.* at 98.

15. *Id.* at 1.

a chance existed, under the old law, that a member of Congress might be subjected to the same standards of conduct imposed on other government officials, the 1963 legislation neatly eliminated the possibility.<sup>16</sup> No comment is made on the policy considerations which motivated the Congress to assure themselves the right to perform acts prohibited to other federal officials. Maybe none is needed.

JEROME S. RUBENSTEIN\*

**Disarmament: Background Papers and Proceedings of the Fourth Hammar skjöld Forum.** Edited by Lyman M. Tondel. Dobbs Ferry: Oceana Publications, Inc. 1964. Pp. xii, 98. \$3.95 clothbound, \$1.95 paperbound.

On April 29, 1963, the Association of the Bar of the City of New York conducted its Fourth Hammar skjöld Forum, with disarmament as the subject of discussion. Professor Louis Henkin of Columbia University was the author of the working paper. Other participants were Hon. Arthur H. Dean, Chairman of the United States Delegation to the Geneva Disarmament Conference, Professor John N. Hazard of Columbia University and Hon. John T. McNaughton, General Counsel of the Department of Defense. This volume is the record of the forum and its proceedings. The forum antedated the nuclear test ban treaty of 1963, the assassination of President Kennedy, the Communist Chinese detonation of a nuclear device and the political demise of Nikita Khrushchev. Nevertheless, these recently published proceedings afford an insight into the continuing and unchanged governmental policy, the mechanical problems of disarmament negotiation and the lawyer's function in disarmament matters.

In the working paper, Professor Henkin makes the necessary distinction between "arms control" and "disarmament," suggests that disarmament may be in the common interest of the United States and the Soviet Union,<sup>1</sup> and discusses various legal problems raised by formal and informal disarmament or arms control. One arresting feature of Professor Henkin's paper is its demonstration that United States policy pursues disarmament as an actual goal, rather than as a mere gambit for purposes of negotiation.<sup>2</sup> The seriousness of our intentions is demonstrated by the statement of Ambassador Dean, as paraphrased in the summary of forum proceedings, that "the United States drafted a disarmament treaty which provided for the elimination of all arms and of all men in three stages, and in the third stage for the setting up of a peace force to take care of untoward events in the world under the general jurisdiction of the United Nations."<sup>3</sup>

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16. "An interesting side effect of this [statutory] interlacing is that of all federal officers and employees, Congressmen—and only Congressmen—are left free to act as an agent or attorney, compensated or uncompensated, for outsiders in claims against and other dealings with the government—limited only by the prohibition in Section 203 against receiving compensation if the matter is in an executive forum." *Id.* at 82-83.

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1. Tondel, *Disarmament: Background Papers and Proceedings of the Fourth Hammar skjöld Forum* 11-12 (1964).

2. *Id.* at 35-36.

3. *Id.* at 58. This policy was earlier advanced in *Freedom From War: The United States Program for General and Complete Disarmament in a Peaceful World*, State Department Publication 7277 (1961), which proposed that, at the end of the third stage, "states would retain only those forces, non-nuclear armaments, and establishments required for the purpose of maintaining internal order; they would also support and provide agreed manpower for a U.N. Peace Force." *Id.* at 19. As one supporter of this policy noted, this "is not some pamphlet dreamed up in what is referred to as the 'foggy corridors of the State Department.' It is the fixed, determined, and approved policy of the Government of the United States of America." 108 Cong. Rec. 3217 (1962) (remarks of Senator Clark).

It is likely that few Americans realize that their government is literally intent upon the abolition of all of the United States armed forces, other than internal police. The term disarmament is a misnomer; the program in truth is one for the transfer of all significant armaments to a United Nations Peace Force. "This force must be strong enough," in Professor Henkin's words, "to overcome any national power or likely combination of powers."<sup>4</sup>

The working paper discusses various legal problems which are likely to arise in the transition to, and maintenance of, the international force's monopoly of weaponry. For example, inspection, which Professor Henkin does not regard as of great importance as a prerequisite to disarmament,<sup>5</sup> could entail, as a means of policing an agreement, interferences with such constitutional rights as the protections against compulsory self-incrimination and unreasonable search and seizure. Effective inspection, for instance, "might require the 'spot-check' where there is no probable cause to support a warrant."<sup>6</sup> The author implies that the inspectors might have to have an authority to search and interrogate for violations by private persons as well as by government, without supervision or control by American courts.<sup>7</sup> As Professor Henkin posed the unanswered question in concluding the forum: "Can Russian inspectors knock at my door and say, 'We wish to see whether germ warfare cultures are being made in the basement of your house?'"<sup>8</sup> An effective inspection procedure might also jeopardize trade secrets of businessmen.<sup>9</sup> The working paper indicates the possibility of "Nuremberg-type trials" for government leaders who violate the treaty.<sup>10</sup> Presumably, some form of international tribunal would also be necessary for the trial of private violators, although the author does not specifically go that far in his suggestions.<sup>11</sup> Professor Henkin interestingly observed, without approval, that some lawyers have suggested that inducements to comply with the treaty could be strengthened by such "radical" devices as "the exchange of hostages."<sup>12</sup>

Incidentally, Professor Henkin expresses his opinion, without citation, that the United States government has the constitutional power to "destroy or give away its property, including everything in its arsenal. It can discharge every soldier, destroy every rifle, give away every missile or airplane."<sup>13</sup> The Constitution, however, confers upon Congress the power to "declare war," "raise and support armies," "provide and maintain a navy," "make rules for the government and regulation of the land and naval forces" and provide for calling forth the militia to "repel invasions."<sup>14</sup> To suggest that the same Constitution affords to Congress or the President, or both, a power voluntarily to cede, totally (and in practical terms, irrevocably) the entire armed force of the United States, excluding only internal police, to an international "peace force" realistically amenable only to the vagrant and transient will of the United Nations, is so insupportably fantastic as to beggar belief. Article II, Section 2 of the Constitution, moreover, provides that: "the President shall be commander in chief of the army and navy of the United States." Apart from the inference that this clause envisions that there shall be an "army and navy of the United States," it surely ought not to tolerate what amounts to a complete voluntary transfer of that army and

4. Tondel, *op. cit.* supra note 1, at 36.

5. *Id.* at 31.

6. *Id.* at 39.

7. *Id.* at 38-39.

8. *Id.* at 66.

9. *Ibid.*

10. *Id.* at 34.

11. *Id.* at 34, 38-39.

12. *Id.* at 30, 65. Presumably, the hostages would be persons other than the originators of the idea.

13. *Id.* at 37.

14. U.S. Const. art. I, § 8.

navy, and a total relinquishment of their command by the President, to such an international peace force. Candor would dictate that the proposal be embodied in a constitutional amendment and that the American people be afforded an opportunity to vote on this effective termination of their nationhood.

The book contains, in addition to the working paper, a summary of the discussion among the participants and their answers to questions from the audience, a chronology of disarmament efforts from 1945 to 1963, the text of the nuclear test ban treaty of 1963, and a bibliography and notes to the working paper.<sup>15</sup> In the forum, Ambassador Dean observes frankly that, in the eyes of the Soviet disarmament negotiators, the Soviet plan was "a plan to disarm the Free World, and in their lighter moments, they had no hesitation in admitting it."<sup>16</sup>

It is this remark by Ambassador Dean which recalls us to the realities of the question and the lawyer's role. An occupational hazard of the lawyer is the tendency to exalt technique over substance. In the attorney's concentration upon detail and drafting technique, the potentiality and effect of disarmament itself can be obscured. From the conquest of Carthage by Rome through the present day, history fails to record a single major instance in which disarmament, whether unilaterally or by agreement, has preserved peace or thwarted an aggressor; indeed, it predictably tends to the opposite effect.<sup>17</sup>

The lawyer owes to his profession and his country a more pointed application of his critical faculties to the sobering realities of the world as it actually exists. The issue is not merely inspection although even there the United States Government has drastically tempered its demands.<sup>18</sup> The deeper question is whether the lawyer will act as midwife at the birth of an international super-force, the creation of which, as still seriously proposed by the United States Government, would entail in practical effect the abolition of this republic as an independent nation.<sup>19</sup> Additionally, the proposals in question contemplate the pursuit of a common interest in peace by the Soviet Union, a power which has never swerved from its purpose of world conquest,<sup>20</sup> and which has violated virtually every treaty or international agreement it has ever made.<sup>21</sup> Recalling Lenin's iron dictum—"as long as capitalism and socialism exist, we cannot live in peace: in the end, one or the other will triumph—a funeral dirge will be sung either over the Soviet Republic or over world capitalism"<sup>22</sup>—the lawyer ought to reflect that "peaceful coexistence," in Communist terms, is a tactic of conquest.<sup>23</sup> Concerning our Government's current policy, as presented in this book, the lawyer's plain duty is to protest—to demand a recommitment to reality and the attainable goal of freedom with peace and independence.

CHARLES E. RICE\*

15. *Id.* at 69-98.

16. *Id.* at 59.

17. See Chamberlin, *Appeasement: Road to War 64-81 passim* (1962).

18. See *N.Y. Times*, June 10, 1964, p. 1 col. 5, describing a statement by Mr. William C. Foster, chief of the United States disarmament delegation at Geneva on the increased American disarmament efforts. The article concludes that: "The essential principle on the need for verification has been retained, but the emphasis has shifted to make inspection as painless as possible for the Russians."

19. See Morris, *Disarmament: Weapon of Conquest passim* (1963).

20. Tondel, *op. cit. supra* note 1, at 62 (statement of Ambassador Dean).

21. See Staff of Senate Comm. on the Judiciary, 88th Cong., 1st Sess., *Study on Soviet Political Agreements and Results* (Supp. 1, 1963).

22. 8 Lenin, *Selected Works* 297 (1943).

23. Standing Committee on Education Against Communism, *American Bar Ass'n, Peaceful Coexistence: A Communist Blueprint for Victory* (1964); see House Comm. on Un-American Activities, 86th Cong., 2d Sess., *Facts on Communism, Vol. I*, at 110-13 (1960).

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