
Albert S. Abel
Book Reviews


The usual function of a book review in a legal journal is to offer a scholarly appraisal of a serious work calculated to indicate what professional significance it may have for lawyers. I shall not deal with these three books in that way. The reason I shall not do so is not because they are without professional significance. Quite the contrary. It is because they involve matters of such urgent importance that their very great interest for us as lawyers is secondary to their still greater claim to our attention as Americans. I do not suppose that the LOUISIANA LAW REVIEW is a medium with much of a reading audience among the general public. I do not believe that the common theme of all three books is such that a reviewer should not let slip an occasion to discuss them in terms which all his fellow citizens can understand and which his fellow lawyers will ponder as concerned with the interests of our common country rather than the more special interests of our common profession.

For the three do have a central theme. It is “the crucial issue of our time . . . the relation of the individual to the State—or of individual liberty to material security.” They have more than that in common. They agree on and plainly state a number of other propositions to which nearly everybody, and certainly I, would subscribe. Russian Communism is currently hostile to and seeks to destroy the United States. American Communism is a servant of the Soviets; its devotees would willingly betray this country to their master. We are fully warranted in thwarting such designs. It is quite proper that anyone who would impair our national safety by revealing critical information should be

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1. See Barth, p. 1.
identified and denied the chance, by excluding him from the
information. But we must not cut off our nose to spite our face.
Our justified distaste for the sinister or silly creatures who are
cat's paws of Sovietism may result and has resulted in a variety
of measures, some useful to prevent but others unfortunately
apt to produce a weakening of ourselves and a corresponding
strengthening of the foe. We must not in preventing the former
let ourselves be stampeded into acceptance of the latter. Careful
discrimination between measures on the basis of their conse-
quences is called for, and it is this which engages much and
perhaps most of the attention of the books under review. An-
other important consideration is the identification of those who
are not to be trusted. There are serious and difficult problems
both in defining the class and in working out procedures to decide
who fall within it which have not been satisfactorily solved even
though those appointed to carry out the program have been for
the most part highly capable men who have acted decently and
fairly. There is need for precaution—but selective precaution.
Excessive remedies, like beheading as a treatment for toothaches,
may be effective without being efficient.

What has just been said is affirmed in and could be sup-
ported by citation from each of the three books under review.
Otherwise they are quite different in scope and emphasis. I pro-
pose to consider briefly each of them in turn. After that has
been done, I want to comment on some of the issues with which
they deal.

Lasswell attempts the most but, in my judgment, achieves
the least. Concern with protecting the country from enemy, and
specifically from Russian Communist, attack runs through all
three books; but Lasswell, even in his title, spotlights "National
Security" as the primary topic. The title does not misrepresent
the content. Much more than either of the other authors, he
stresses security and, by comparison, neglects discussion both of
freedom and of the interactions of security and freedom. No one
can complain about that for it is a matter of fielder's choice. It is
up to a writer which branch of his subject he cares to emphasize
even though it makes his treatment harder to compare with those
of others. What one may complain about is a tendency to think
about, or at least to talk about, security and freedom as if they
were contrasting ideas, as if the more security one had the less
freedom and vice versa. He seems to think in terms of swapping
so much freedom for so much security and making the best
bargain possible. He undertakes to suggest what kind of an exchange may profitably be made by assigning special, and I should say, artificial meanings to both security and freedom. The former he broadens to include almost the whole notion of national interest, the latter he narrows to a conventionalized concept with four categories—civilian supremacy, freedom of information, civil liberty, free economic enterprise. On that approach, the subject of national security is as broad as a barn door. It invites consideration of almost any civic or economic matter which has any relation to national strength and well-being. Individual freedom on the other hand is typed. The discussion invited as to it is of the details involved in any one of the four favored components. Both invitations are accepted. The result is a shotgun affair where all sorts of matters crop up unexpectedly. The cabinet system of government, the League of Women Voters, ex post facto laws and the availability of subpoenas to individuals, the Hatfields and the McCoys, and the incentive effect of the tax structure rub shoulders with such oddly precise recommendations as the addition of three (no more, no less) "full time civilian members" to the National Security Council and the institution of National Security and individual Freedom Days (like National Candy Week?) as having some essential relation to "national security and individual freedom." Such a statement is unfair, however, and makes Lasswell's book sound ridiculous, which it is not. I am in full agreement with him that nearly everything which strengthens our governmental and economic systems does bear on national security. I do cherish and recommend each and all of the four constituents of individual freedom which he mentions and want my own set of freedoms to go on including them. I find most of his conclusions on specific details valid and many of them stated with refreshing clearness and forcibleness. It would be good for everybody to get acquainted with what he has to say because mostly it makes good sense and because it is said in an easy, unacademic manner. All that, however, shares the major defect of the book itself—that is, it is somewhat beside the point. What Lasswell has to say is rarely wrong and never altogether irrelevant. The trouble is, the discussion plays around the edges and never really gets to the heart of the matter.

2. "The conclusion is that American security measures should be the outcome of a comprehensive process of balancing the costs and benefits of all policies in the foreign and domestic fields." Lasswell, p. 55.

3. See, e.g., id. at 57.
If Barth's book has a fault, it is that it is too excellent. Chafee is certainly right in calling it an "admirable treatment" and comparing it with the discussions of Milton and Mill. This is a noble and comprehensive restatement for today of their message: that freedom of opinion and expression is our security. The notion that freedom and security are competing elements is rejected. Rather, freedom is the root of security or, as Barth prefers to put it, "freedom is a source of strength." The demonstration is made in distinguished and eloquent prose—perhaps too distinguished and eloquent. All Americans stand to gain by a clear grasp of the principles he asserts and all Americans ought to be reached by his book. But his expression is so much better than anything we are accustomed to that many, thinking the unfamiliar merit a fault, may, even if they take it up, quickly put it down as too dull, too deep, or some other roundabout statement indicating that it is uncommon. "It is indisputable, of course, that particular care needs to be exercised in the selection of persons to fill certain key positions involving the formulation of policy and access to vital classified material." "The degree of care . . . must depend . . . on the importance—in security terms—of the jobs they are to fill." But in seeking "security by concealment" we must not sacrifice "security by achievement," which is our true safeguard. With a wealth of detail, Barth shows how we have been doing just that. How the fool's gold of Communism has attracted and been discarded by many of our easily dazzled fellow citizens and how we may expect others now deceived by it to find out the truth—how harmful the legislative smear has been and how poor a shield a trumpet is—what a clumsy mechanism the loyalty investigation program is and must be, weeding out some rank shoots indeed but wastefully trampling the field to do so—how it has snarled the efforts of that fine investigative agency, the FBI, more or less against the Bureau's own wish and perhaps in a way of threatening its prestige and usefulness should future change of sentiment make

4. Barth, p. xi.
5. Id. at ix.
6. See id. at 236; cf. id. at 2.
7. Id. at 144.
8. Id. at 143.
9. Id. at 178-179 (quoting from the 1949 Report of the Joint Committee on Atomic Energy).
10. Id. at c. II.
11. Id. at cs. III, IV.
12. Id. at cs. V, VI.
some scapegoat necessary\textsuperscript{13}—what harms have arisen from the mauling of those special groups of eccentrics, the unorthodox scientists\textsuperscript{14} and the unconventional professors\textsuperscript{15}—all are set forth with a wealth of illustration. Barth summarizes the record superbly. All the scattered incidents which one has read about and some that one has not read about are assembled. Their variety and range are merely suggested by the listing above. Barth's account brings home to the reader their total effect. It is a disturbing story.

Gellhorn studies at length the application of security and loyalty measures to scientists—a matter to which Barth gives a chapter and Lasswell a few paragraphs. The very great importance of science in the defense picture has naturally led to special interest in the trustworthiness of scientists. Their activities have been subject to extraordinary scrutiny. They therefore afford material for a useful case study along the lines of Barth but more intensive. Gellhorn's general position and conclusions agree with Barth's. His more detailed discussion calls for prose of a less lofty literary quality. Nevertheless his treatment is not merely readable. It is enjoyable—not in its content, surely, but in its style. Scientific facts, he tells us, differ from facts not in nature.\textsuperscript{16} Barriers to the spread of information cannot really keep the former a secret, for what has been learned by one can be learned by others. They can and do prevent our own scientific development, by making our own scientists work in a fog without the benefit of one another's experience,\textsuperscript{17} by preventing intelligent criticism of misdirected efforts and poor performance,\textsuperscript{18} and in other ways. Their very existence discourages scientists from undertaking projects important to defense. Professional recognition is to the scientist what money is to most people, the reward that calls forth effort. The scientist will no more go into a field where there is no publication than another will go into a field where there is no pay.\textsuperscript{19} There is some knowledge, primarily of processes and techniques, which must be kept secret; but it does more harm than good to sterilize with a blow torch. Such political agencies as the House Committee on Un-American Activities detract from real security. The specialized agencies—

\begin{itemize}
  \item \textsuperscript{13} Id. at c. VII.
  \item \textsuperscript{14} Id. at c. VIII.
  \item \textsuperscript{15} Id. at c. IX.
  \item \textsuperscript{16} Gellhorn, p. 9.
  \item \textsuperscript{17} Id. at c. II.
  \item \textsuperscript{18} Id. at 49.
  \item \textsuperscript{19} Id. at 58.
\end{itemize}
the Loyalty Review Board, the military departments, the FBI—
have been fair and reasonable but their defective procedures and
the partly impossible jobs assigned them to do unavoidably mean
that the net result of their action is harmful, however proper
any specific decision may be. We tend to forget that very, very
little of the program relates to scientists governmentally em-
ployed in positions having access to secrets of military impor-
tance. The flash of light at Hiroshima has fixed the intent gaze
of the world ever since. We are, as it were, hypnotized with it
and think "atomic bomb" when any one says "science." Assum-
ing that it would be all right to apply loyalty tests to all govern-
ment scientists working on atomic projects, the public ought to
realize that they are only a small fraction of those affected. More
scientists are working on other military projects, still more in
connections like the Public Health Service not remotely military.
The greatest number of all are those with private industry or
with universities performing special services for the govern-
ment. Exposing them all to having their loyalty questioned is
no good way of achieving the very proper end of safeguarding
security. "In summary terms, the best course would be to shift
the emphasis from 'loyalty' as an abstraction, and to place it
instead on 'security.' Whenever a position is 'sensitive' in the
sense that an incumbent will gain access to confidential matters
of military or international concern, the probity of the incum-
bent must be assured; and in this context an inquiry into atti-
tudes and associations may conceivably have relevance. But in
any event the number and scope of investigations into these mat-
ters should be limited to the fullest possible degree."20 The
conclusion parallels that of Barth. The treatment, with its well-
knit mass of convincing detail, is parallel. I cannot suggest to
the prospective reader any choice between them. I can only
recommend that both be read to supplement each other.

In spite of general agreement with what Barth and Gellhorn
have to say, a few questions still bother me. Everybody ought
to be left with a few such questions by any book worth reading.
I shall go out on a limb by discussing three or four of them—not
all, by any means, but those I find most troublesome.

The failure to reveal to those under investigation the inform-
ants and the information against them is regarded as a serious
flaw in the procedure of investigating agencies. It would be best
to avoid it, of course, whenever it can be done. Back fence gossip

20. Id. at 230.
is not a reliable source of character information about a neighbor (or the neighbor's youngsters). It is just as unreliable where the "neighbor" is any fellow citizen—even a screwball—and the "back fence" is an official file. Even worse, all sorts of dangers of getting even with people or of accusing others to attract attention away from one's own little indiscretions are opened up, when secret informers are encouraged. There is real danger in giving weight to the remarks of the irresponsible and the back-biter and the practice involves that danger. Heretical as it may seem, I am less upset about the fact that it is traditional in our legal system to allow defendants to know the witnesses and the testimony against them, a tradition which is even written into the Constitution. That may show, and I will admit, that the dangers from anonymous accusations are so serious that they should be frowned on, even ruled out entirely in ordinary criminal cases. Also, the praise of cross-examination as a means for developing the truth or at least exposing the untruth is for the most part deserved. Still there is something to be said on the other side. A clever trial lawyer can in some cases so entangle a plain, honest witness that the latter will come out of cross-examination looking like a fool or a rogue. In many more cases, the plain, honest man is afraid that might happen and will conceal the fact that he knows anything about a matter rather than expose himself to being called as a witness. Again, people who have to have day-to-day contact with each other in business or with each others' family or friends socially are willing to tell off the record many truths which they will not put on the record. A high sense of civic duty might make the public interest come first but human nature gives priority to the resulting awkwardness in personal contacts; and a substantial number of people do seem to be influenced by human nature. I leave altogether aside the undercover agent and the cloak-and-dagger situation of swift vengeance by the unseen hand for telling the dread secret. I limit myself to the humdrum suggestion that, while allowing private accusation invites the bearing of false witness, requiring publicity discourages appreciably the bearing of true witness. Unless the need for revelation is very great indeed, the former consideration should prevail. But suppose an investigation is strictly limited to a security (as distinct from a loyalty) matter and suppose information of vital importance will be exposed to betrayal, can one properly insist on publicity of accusation as a primary value? I know perfectly well that private
informants are actually used in a much broader range of matters. I can certainly agree that there should be a very serious threat of very serious harm from a wrong determination in order to outweigh the reasons against their use. I am aware of the danger of eating away principles by the introduction of mild little exceptions, which grow and swell beyond recognition. Yet, as to whether there should always be public accusation and confrontation, I wonder.

The role of the FBI is criticized not so much because of its actual performance as because of the potential harm deemed to lurk in a political police with secret dossiers. No doubt there is a danger. Is there a better alternative? The authors agree that the FBI has tried to conduct itself decently and fairly and that its performance has been on the whole creditable. It may be that it is called on to gather information about matters which are not intimately related to any really useful precautions. That is not its fault. Indeed, there is reason to believe, for instance, from its request to be dissociated from investigations under the National Science Foundation bill, that it does not want some of the chores it has been given. They dissipate its energies; they throw it open to future attack in the event of a shift in sentiment. Still, if there are any matters as to which investigations relative to security must be made, someone must make them. It will hardly be thought that a grand jury is the right instrument for this task. Some permanently established official agency seems to be called for. It should be one with as much in the way of qualification and as little in the way of disqualification as can be had. There would certainly be duplication, and in all likelihood unevenness of performance, if the Atomic Energy Commission, each branch of the armed services, and every other custodian of some portion of national affairs related to security were to set up its own special investigating arm. Aside from that, what reason is there to believe that they would be able to recruit a superior force or to act on policies superior to those of the FBI? Perhaps the Bureau does not “attract the best graduates of the country's professional schools.”21 All the same, it does attract good people. It is my own observation that the FBI recruitment policy, though it may not skim the cream, draws to it a very high average level of ability. I know of no program

on a comparable scale which is superior to it. Whatever its shortcomings may be, so long as security investigations are to be made, I see no other agency in sight whose personnel is better or even as well fitted to conduct them.

Only where exposure to greater risk would result from withholding action, however, can I have reservations on the matters mentioned. A clear definition of those situations is sorely needed. None of the books reviewed quite adequately formulates the standard. There is talk of "sensitive" agencies and areas, suggestion that a job classification on that basis be undertaken by the various agencies, ample assent that national security is the paramount consideration and that no one disposed to betray secrets vital to it should be placed in a spot where he can do so. Security is the criterion; but, as Lasswell's discussion demonstrates, it is a term of very indefinite extension. Most of the current preoccupation is with applications of science to national defense, and this is the really tough question. It is not the only one, of course; but few would be disposed to suggest that anyone should be entrusted with the plans of campaign (should such exist) for defending, say, Greece, without being subjected to a rigorous screening—perhaps not even with a chart of the harbor improvements in the Piraeus. Such matters are, however, in Gellhorn's phrase "facts not in nature." With scientific information, the drawing of a line is harder. It is complicated, as is pointed out, by the circumstance that the more we withhold even from our enemies the more we withhold from ourselves, hampering or baffling our own scientific advance in many cases beyond any gain from the secrecy. Moreover, the principles of nature are a book written in no particular language and there is no national monopoly on scientific intelligence, so that there is strictly no such thing as a "scientific secret." Some conflict between these propositions is evident. If secrecy imposes no serious impediment to the discovery of the concealed fact, our own scientists can hardly be significantly hampered by it any more than the Russians. If, on the other hand, secrecy does interfere with our own scientists, it must in some degree handicap others. My own feeling is that where there's a will, there's a way to discover independently anything anyone else has discovered but that the way can be smoothed by knowledge of other people's work. Basic scientific facts are probably going to be learned anyhow. Not much will be gained by trying to stop that.
In any case, it is not they but their applications which give us the edge militarily. This suggests the distinction sometimes taken between science and technology, which Gellhorn notes. He also notes, however, that this line is easy to state but hard to draw. Clear enough at the extremes, they melt into each other. Where the one leaves off and the other begins, scientists and engineers hesitate to say. Outsiders who are neither should be wary even of assuming that there is a distinction. Somewhere hereabouts, though, is the boundary which divides matters where secrecy is effective and beneficial from those where it is both futile and prejudicial to our own progress. Weapon designs, performance, and properties, the design of plants for their production, sometimes maybe specific instruments or processes—these are matters which Gellhorn suggests call for restriction and Barth seems to be in general agreement.

Such a catalog, however, while suggestive, seems to me a fumbling approach. What the items have in common is that they present problems not so much of the content or even the application of scientific laws as of the most economical, efficient, and expeditious way of applying them. All sorts of arrangements and combinations are possible. These are almost endless in contrast with the singleness of the basic laws themselves and the relatively limited group of fundamental applications. They are also less significant for our own scientific progress in general. The truer use of secrecy is perhaps less to keep things unknown than to exact a high price for their discovery. If resources of manpower or material beyond what can readily be spared must be squandered and yet the matter to be learned is such that knowledge about it gives an advantage too great to be safely disregarded, there is value in keeping it secret. The balance between prospective operational advantage and the probabilities that independent study will not disclose the knowledge except by undue diversion of resources is not one which can be made by listing items. Nor is it one appropriate for a political or a strictly military judgment. It calls for scientific knowledge. We have scientists so devotedly patriotic and so competent that they could safely be called on to make the appraisal and tag those matters which must not be revealed, provided it were made clear to them that the decision was really theirs and was not subject to political reversal. Indeed, something

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22. Gellhorn, p. 73.
23. Barth, p. 188.
of the sort apparently underlies the "Declassification Policy" of the Atomic Energy Commission, set forth as an appendix to Gellhorn.\textsuperscript{24} With some modifications, cannot the idea be adapted, perhaps through the use of advisory panels of scientists from industry and the universities, throughout the whole range of scientific information? Working out proper security controls is not a simple matter. They are needed, however, and there is no reason why sober examination of all the factors cannot lick the problem. Vigilant enforcement of such controls is the least that we ought to demand.

It is also the most. None of the considerations that require a vigorous security program support any part of a loyalty program. That would be so even though "disloyalty" was not so often just a shorthand way of saying that some one else's social views are obnoxious. As it is, it is one of those things which could boomerang with unexpected suddenness. But altogether aside from that, the whole idea should be scrapped. Barth and Gellhorn develop the reasons in a way that cannot be improved. It needs to be got across, however, so I shall venture to repeat it in plain terms. I am not fond of people who are disloyal to their country any more than I am of those who are unfaithful to their wives or their promises or their friends. Most advanced thinkers find me a dull, unimaginative fellow and do not greatly care for association with me. I doubt that odd types are specially qualified to run the government or that affairs would greatly suffer if a steady lot were in charge. Still I am convinced that, whatever shade of unconventional thinking may be meant by disloyalty, attempts to suppress it do not help the country. They hurt it. If, indeed, disloyalty is simply used as evidence of security risk, that is something else. It may sometimes be relevant there and might then bear looking into but only, I should suppose, where there was other direct independent evidence and not as itself proof. There has been much naive talk about the horrors of "guilt by association." The old sayings that "Birds of a feather flock together" and "You can tell a man by the company he keeps" make more sense to me. It flouts ordinary experience to suppose that people do not pretty much share the standards and opinions of the companions they ordinarily choose. But neither "disloyal" associations nor "disloyal" opinions are of themselves properly a matter of concern. Any form of thought

\textsuperscript{24} Gellhorn, p. 235.
control is the surest poison for the American way of life. I should much prefer that your opinions should openly and violently disagree with mine than that you should either have no opinion, have one contrary to mine and conceal it, or even accept mine just because it is mine. I will naturally hope to persuade you I am right but hope equally you can persuade me if I am wrong. But an opinion not brought out in the open can neither be met and overcome, nor meet and overcome. This hue and cry about disloyalty denies strange ideas their hearing before the public. Many of them are very bad ideas. If so, they will not survive examination. They will survive suppression and live on, like grubs on the underside of a log. Everything I have seen or heard makes me believe that our way of doing things is better than the Russian way. While, if wrong, I want to know it so I can change my view, I am confident enough in my opinion that I believe most other people when they know the facts would accept it. That supposes of course that most people have about as much common sense and sincerity as I have. Such a belief seems to me to be in a nutshell what democracy is all about. Majorities can be wrong and minorities have been right; but eventually most people are smart enough to see through shams and to appreciate merits and honest enough to follow what they believe. New ideas, different ideas, are always needed for progress (which means change), indeed for security itself. Most new ideas are worthless. Those we can trust popular good sense to reject along with the bad old ideas which continually keep reappearing and being rejected. A few are good. The flow of them is vital. Anyone who really believes in democracy, will trust the people to deal with them on their merits. But if the holding or expression of new or different ideas is itself discouraged, no candidates, good or bad, will come forth. That is exactly the vice of loyalty programs. They prevent ideas submitting themselves for acceptance because of a distrust in the people's ability to select wisely. They are born in doubt of other people's judgment, in a disbelief in democracy. If our basic American ideas about democracy are right, such programs are therefore all wrong; I am one who agrees with Barth and Gellhorn that our faith in democracy is right.

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