

## BOOK REVIEWS

THE SOCIAL COSTS OF PRIVATE ENTERPRISE. By K. William Kapp. Cambridge, Massachusetts: Harvard University Press. 1950. Pp. xii, 287. \$4.50.

*The Social Costs of Private Enterprise* contains many provocative observations, but much of its genuine value is dissipated by the author's intemperate inclination to lay all the evils and ailments of mankind at the doorstep of our private enterprise system. That the book is provocative is demonstrated by the fact that a summary of its "central points" was printed in *Labor and Nation*<sup>1</sup> and this summary was subsequently digested in American Management Association's *The Management Review*<sup>2</sup> with the following comment: "Controversial articles are presented in the Review in line with our general policy of keeping readers currently informed of all points of view."

Defining "social costs" as all direct and indirect losses suffered by third persons or the general public as a result of private economic activities, the author announces his objective as "the tracing of a maximum number of cases of social costs under conditions of competitive economic life." Professor Kapp states that he is "not implying that regulation and economic planning would necessarily eliminate these social costs" and that he is not "comparing unregulated private enterprise with a system of economic planning." These statements are not completely consistent with his subsequent discussion concerning the social costs of specific activities. Nor are they consistent with his thesis of political implications. This thesis is that our "political history of the last 150 years can be fully understood only as a revolt" by those who bore the brunt of social cases in the past and who now are using their growing political and economic power in an effort to protect themselves against the undesirable consequences of the shifting of part of the social costs of production to third persons or to society. The result of this revolt has been a "steady increase of protective social legislation, the enforcement of minimum standards of health and efficiency, the prohibition of destructive practices in many fields of production, or even the efforts of farmers, businessmen and labor to peg the prices of their products by means of oligopolistic restraints of trade."

It must be readily admitted that no economic system can operate with absolute perfection. A virile system will, however, welcome any criticism which reveals valid and rectifiable weaknesses. Our system does have weaknesses, but its capacity for self-evaluation and self-correction is one of its greatest assets; it is not a static system. It has eliminated many defects, and substantial progress has been made toward the elimination

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1. *Labor and Nation*, Fall, 1950, pp. 18-21.

2. *The Management Review*, January, 1951, pp. 7-8.

of others. At the same time, no doubt, the dynamic nature of our economy has created new defects which must be confronted.

Professor Kapp does level some solid criticism against certain activities, past and present, of our economic system. It cannot be denied that a manufacturing plant which dumps untreated industrial wastes into streams and pollutes the streams does shift "social costs" to persons entirely unrelated to those responsible for the damage. People, in many instances, cannot use the water without impairment of health. Animal and plant life are frequently destroyed. Downstream municipalities must spend large sums to purify the water. A disturbing picture can be made of the effects of water pollution, and the author does paint such a picture. Similarly, a mill that spews volumes of smoke out of its stacks does tremendous damage to the community in which it is located. Human health, again, is often impaired; the soil loses its fertility; plant and animal life are destroyed or injured; buildings are damaged; maintenance and painting costs are increased; artificial lighting costs are high as a result of the loss of daylight and even higher accident rates appear with the increased intensity and duration of city fogs as a result of smoke. Many of the social costs discussed by the author have long been the concern of numerous people and there has been much discussion of such costs as the impairment of the human factor of production and the depletion and destruction of animal resources and of soil, forests, oil and coal.

An essential part of Professor Kapp's thesis is that innocent third parties should not bear the burden of these costs. Instead, the costs should be borne by the enterprise creating the cost and should be calculated as a factor of doing business. His analysis is, however, a bit confused. He takes the position in some instances that the burden on private enterprise of eliminating social damage or absorbing social costs "would cause serious financial disruptions in certain well-established lines of manufacturing" and states that entire industries are able "to occupy and to maintain their present economic position only because they do not bear the full costs of production but find it possible to shift a substantial part of these costs to other persons and to the community at large." He is not inclined to consider what private enterprise has actually done, or is doing, to eliminate or absorb the "social costs" of doing business. To him, this is somewhat beside the point because he considers the most important issue to be the extent to which such remedial interference with the economic process is justified and economically worthwhile.

The changing attitude of business toward its social responsibilities cannot be ignored. While many segments of business have not assumed their responsibilities, there are, on the other hand, an impressive number of segments, whole industries as well as individual concerns, which are constantly taking steps to eliminate any deleterious effects of their doing business upon the community as a whole. An illustration of this is the St. Louis smoke program. The author does, indeed, quote from the Report of the St. Louis Committee on Elimination of Smoke, but he quotes it only to show the evils of smoke.<sup>3</sup> He does not mention that the leadership

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3. p. 76.

to eliminate smoke came fundamentally from the business elements of the community, that an effective ordinance was passed, that the ordinance has been enforced. The result of this business leadership action is that the City of St. Louis does not currently have a smoke problem.

In the area of water pollution, a recent example of assumption of social costs is the case of *Illinois v. Indiana*.<sup>4</sup> In that case, there was no hearing on the merits of the question of pollution. Nevertheless, all of the parties demonstrated a sincere desire to develop the most effective waste disposal systems possible. The Standard Oil Company (Indiana) alone spent \$6,055,876.00 in changes and improvements in its disposal system at Whiting, Indiana.

The data and analysis found in the fourth to the ninth chapters of the book are, with some exceptions, substantially sound. Commencing with the tenth chapter, however, the author indulges in some castigations of private enterprise which are not warranted by the facts. He assumes the position that private enterprise is damned if it does and it is damned if it doesn't. Professor Kapp is most critical of the methods by which technological improvements are developed and introduced. The innovation of machines causes other firms to suffer losses through the depreciation or obsolescence of their capital equipment. He says, "it offers cold comfort and certainly no practical remedy to the individual enterpriser to be told that the losses which forced him into bankruptcy are offset by the gains of those who are getting their goods for less than the price that would have repaid the average total costs." In effect, he counsels innovators

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4. *Illinois v. Indiana*, 330 U.S. 799, 332 U.S. 822, 335 U.S. 850, 338 U.S. 856, 340 U.S. 869, represents an effective and intelligent approach to the question of industrial wastes. In that case the Supreme Court appointed Luther Ely Smith, Esq. of St. Louis, Missouri, as the Special Master. After conferences with counsel and representatives of the various parties, it was decided that the matter was one which could best be resolved without formal hearings on the merits. Instead, the parties, under the supervision of the Special Master, undertook to develop, and did develop, engineering solutions to their common problems. Unfortunately, the reported orders of the Court do not reveal the details of the procedure followed in this case. These details are, however, available in the Special and Interim Reports filed by the Special Master with the Court. In his Fifth and Final Report, the Special Master stated:

The various corporate defendants at all times throughout these proceedings revealed a sense of civic obligation and social responsibility of the highest order. While emphatically denying that anything that they had done had polluted the waters of Lake Michigan, they nevertheless undertook and completed extensive work to modernize existing disposal systems and to install new disposal systems when necessary, which would render their systems the most effective possible and practicable under existing circumstances. As noted, this work was accomplished even in the face of challenging obstacles in the shape of material and other shortages, and substantially increased costs due to the rising wages and material markets. The total amount expended in direct costs was approximately \$14,742,987.72.

not to make technological improvements until they are certain that their competitors will suffer a minimum loss in capital investment! This reviewer shivers to think what would happen to technological development and to our well-being if such a concept became operative and controlled the introduction of technological improvements. Another social cost of technological change is the effect on the workers—skills become obsolete; workers must acquire new skills; they have to make costly moves to other communities and even “ghost towns” are born. The major social loss is denominated “technological” unemployment. The author’s treatment of technological change is superficial. It is amazing that he makes no reference whatsoever to Sumner H. Slichter’s *Union Policies and Industrial Management*. Nor does he mention many factual analyses which would demonstrate that his position is an absurdity; for example, one such set of analyses may be found in the Twentieth Century Fund’s *America’s Needs and Resources*.

In a chapter entitled “The Frustration of Science” the author adopts the technique of a cook in making a stew of whatever is left in the refrigerator—he throws in everything he couldn’t work in earlier in the book. The result is a weird concoction. He starts off by contending that the development of the atom bomb and “the successful solution of the practical problems raised by nuclear fission is an . . . indication of what could be achieved if the traditional methods of competitive research were abandoned.” He is dead wrong. Actually, private enterprise played no small part in helping solve the practical problems involved in the development of the bomb. The fact that the government poured money into the development of atomic energy and that the bomb was successfully developed is no proof that the government does not frustrate science and that private industry does. Indeed, a very crucial question today is whether the government is not causing extreme frustration of science. The author will do well to read Walter Gellhorn’s *Security, Loyalty, and Science*.

Some of the author’s statements in this chapter are pure unadulterated bunk. An example of this is that “industry does not spend considerable sums on research dealing with the prevention of social costs; scientific inquiries into the requirements of public or even industrial health (i.e., into such problems as optimum temperatures, lighting, air circulation, on prevention of accidents) are not likely to attract much attention.” Anyone who has only a passing acquaintance with the activities of private enterprise in recent years knows that there has been constant and extensive research concerning prevention of accidents.

Extreme secrecy, duplication, lack of coordination, absence of provisions for the exchange of data and results achieved are all described as inherent limitations in the normal organization of research in a capitalistic market economy. No consideration is given to other factors which give rise to these “limitations.” He might have, for example, considered the viewpoint expressed in Norbert Wiener’s *Cybernetics* and in his *The Human Use of Human Beings*. Certainly, our atomic energy experience does not demonstrate that governmental control will eradicate these “limitations.”

One ludicrous argument is that research is retarded and science is frustrated because small concerns do not engage in scientific research for the reasons that the costs of research and risk of its being unsuccessful act as deterrents. Aside from the fact that many small concerns do engage in scientific research, the alternative implications of this argument are certainly esoteric. Does the author mean to imply that the existence of many small concerns which render essential economic services cannot be justified unless, in addition to a primary economic usefulness, these concerns also engage in research? Is there a positive, inescapable duty on the part of all businesses to engage in scientific research? Does he mean to imply that small businesses should be eliminated in favor of large businesses simply because a large business is more capable financially of conducting research?

While Professor Kapp copiously documents his books, this documentation reveals a fundamental weakness of his approach. For the most part, the authorities he cites are government publications, the writings of theoretical economists and studies by various academicians. They are essentially good authorities, but what is significant is the vast amount of relevant literature which Professor Kapp has ignored completely. There is no actual consideration of such "business literature" as that published by the American Management Association, the Committee for Economic Development, the National Industrial Conference Board, or the numerous technical and trade journals. This area of literature cannot be ignored by one who undertakes a study of the social costs of private enterprise. Professor Kapp should have taken time to learn what private enterprise is actually doing about some of the questions he discusses.

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SECURITY, LOYALTY AND SCIENCE. By Walter Gellhorn. Ithaca: Cornell University Press. 1950. Pp. viii, 300. \$3.00.

This book is a functional appraisal of our methods and systems to insure the security of data and the loyalty of our scientific and government personnel. No one disputes the need for adequate safeguards against the risk that the enemy may derive benefit from our scientific progress. But the cost of our security and loyalty programs is not equally appreciated and recognized.

Walter Gellhorn has brought his remarkable experience as a critical investigator in the field of administrative techniques and procedures to the study of the efficiency and of the compatibility of our security and loyalty systems with the democratic institutions and principles they are intended to preserve. His scholarly research is presented in a clear and simplified style free from that legal jargon which would have restricted the broad appeal of the book to the larger audience it is meant to reach. The problems involved transcend the interests of the legal fraternity, not only because they strike at the most vulnerable areas of our system of govern-

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ment, but primarily because widespread understanding and support are needed for readjustments and reforms of our security and loyalty measures.

Recent convictions of spies have crystallized public opinion behind the need for secrecy in our atomic establishments. Yet all scientists agree that secrecy hinders progress not only for our adversaries, but for ourselves. An atmosphere of freedom is traditionally regarded as highly important, if not necessary, for the natural development of scientific research. Classification leads to compartmentalization and fragmentation of knowledge. But discoveries are more often occasioned by untrammelled association and free contacts among men of science than by isolated individual research. As Chancellor Compton remarked: "unforeseen developments are the result of every great discovery." The author presents an impressive balance sheet of our secrecy program and points out the ever increasing difficulty in recruiting new competent personnel, both because of the "fear of smear" and because of the ban on publication—the traditional means of scientific personal and collective advancement. It is also known that secrecy regulations have hindered the establishment of those schools of nucleonics which alone can enable the large scale training of new generations of nuclear scientists.

Again, at least from a long-range view, secrets do not keep, and the true issue is to remain ahead of our adversaries. Thus, secrecy far from being a foolproof panacea is an essential but costly device to be applied and enforced with the utmost caution after a careful balance is determined between two conflicting needs. Gellhorn suggests that "secrecy ought not to be readily attached to scientific or technological matters merely because in some aspects they have military significance. It should be attached unhesitatingly if their sole significance is a military one."

The author warns that the vitality of German laboratories was sapped by replacing merit with Nazi orthodoxy. It is a striking contrast that exiles from totalitarian Europe made most essential contributions in the crucial days of atomic development in this country. Then the scientists met great difficulty in persuading the military of the warlike potentialities of their atomic discoveries and they operated in a regime of self-imposed censorship.

Orthodoxy leads toward sterility. Overemphasis on loyalty programs brings about conformity in an uncritical and unquestioning acceptance of prevailing notions and practices, to the cost of evolution, and of natural progress. These words of Gellhorn deserve thoughtful attention:

One of the virtues of democracy is its maintenance of a climate in which normally timid persons are allowed to entertain opinions without having to demonstrate heroic qualities. The central tenet of the democratic philosophy is that governmental policy should be shaped by the discussion of men who are free—free to inquire, to confer, to experiment, to debate, and to complain. The loyalty program drifts in the direction of curtailing that freedom.

Of particular interest to lawyers is Gellhorn's discussion of the procedures established to insure secrecy of confidential material and loyalty of personnel. Present regulations are analyzed with a remarkable wealth

of details in specific instances of their actual enforcement. The requirements of due process are tested not only against the constitutional guarantees but also in the light of higher standards of fairness which the government could well adopt even toward applicants for employment. Realistically considered, a denial of "clearance" is often as fatal to a young scientist as a dismissal for loyalty reasons can be for a long-time employee. The author recommends that the present procedure whereby the Atomic Energy Commission denies any hearing to applicants for clearance, should be revised to afford them some opportunity to be heard. Other procedural improvements suggested concern the disclosure to the employee affected of more detailed charges and, whenever possible, of the source of the evidence against him.

One of the main theses of the author is that security and loyalty are basically different and that:

the security program involves persons in whom we wish to have the fullest confidence because of the nature of their responsibilities. . . . when we withhold "security clearance" we make no finding that otherwise an undesired event will surely come to pass; we merely find that there is an undesirable *possibility* and we seek to avoid even the possibility, let alone the actuality. But the loyalty program is differently oriented. It deals neither with "sensitive agencies" nor with "sensitive jobs."

Gellhorn urges that disloyalty should be proved by conduct rather than through opinions or "sympathetic associations," and that "security clearance" be required only as to "sensitive" jobs to be designated by the head of the agency. "Effectively, if unintentionally, the focus upon opinion as a measure of loyalty tend to discourage the holding of any opinion at all."

This book, which is part of the Cornell Research in Civil Liberties project directed by Professor Robert Cushman, is a credit to the project and to the Rockefeller Foundation which provided the necessary grant. It is as well informed as it is courageously provocative. Walter Gellhorn has made an important contribution to crucial issues of these critical times, which perhaps do not admit of any clear cut and all-embracing solution, but which require the watchful attention of our best lawyers and scientists, lest protective devices become more costly than the risks and dangers they are intended to ward off.

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CASES AND MATERIALS ON WORLD LAW. By Louis B. Sohn. Cambridge, Mass.: The Foundation Press, Inc. 1950. Pp. xxii, 1363. \$8.00.

International legal study has received much prominent consideration since the end of World War II. Many law schools are placing "International Law" on their curriculum for the first time and others are making it a required course in lieu of the more usual "option." Not only in law schools is the growth of international study evident but many universities now offer a wide range of courses in the field of international affairs and relations. The increased interest is due, in no small measure, to the

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general feeling that such study, although not of the "bread and butter" variety, will leave its mark in training future citizens to have a better understanding of international problems and their solution in the quest for a permanent peace.

However, the methods and approaches of presenting to students such a manifestly broad field of study are far from consistent and the purposes to be achieved far from uniform. Should the purpose of the lecturer be to attempt to cover a large range of history, economics and contemporary politics or should the students be confined to the study of strict international legal rules, such as they are? Again, should the method utilized require the student to gain his knowledge from the conventional textbooks, or approach the study from the prevalent "case" method or, possibly, be made to grapple with a mass of material in the solution of a presented problem? These are a few of the problems now facing lecturers in this field. Thus, though all will agree that international legal study in some form is desirable, there is little agreement as to what and how it is to be taught.

The approach of Professor Sohn's "Cases and Materials on World Law" is the presentation of "raw materials" relative to the constitutional law of the world community so that law students are provided with an opportunity for the development of "special skills," and yet "do not require from other students that knowledge of procedural and other private law techniques which makes the study of most legal subjects so difficult for them." In employing this approach or method, Professor Sohn has made an excellent selection of decisions and advisory opinions of the international courts, committee reports and discussions and declarations of the General Assembly, etc. These materials are organized into ten chapters, with an appendix containing a very complete compilation of the basic documents of the international organizations. The chapters are so designed to observe the growth of these organizations from their legal, social, economic and political aspects, and it is evident that they are not only arranged for strictly legal study. The political scientist will find ample material for his particular problems in the materials on the composition, voting powers and functions of these international bodies. The sociologist and the economist will find the chapters on the "Rights and Duties of States," "Economic and Social Council," and "Non-Self-Governing Territories," of particular interest. The lawyer will have his opportunity to develop "special skills" with special reference to the materials contained in such chapters as those entitled "International Courts, Arbitration and Conciliation," the "General Competence of International Organizations" and "Membership in International Organizations." Of particular value, he will be required to interpret the trend of world law from other material than legal precedents. He should thus observe its growth from both its legal and political aspects. Finally, it may be mentioned that, due to the variety of selection and excellent bibliographical notes, "Cases and Materials on World Law" is adaptable to any method of teaching, whether the lecture, socratic or problem method be employed.

As for Professor Sohn's purpose in studying international law through

the evolution of international organizations, it is a particular branch of international law and, possibly at the moment, more in the realm of political science than law. But that this study is just as important is trite to say. The future of international law is dependent on the strength of international organization and the sanctions that it brings. The legal rules themselves are dependent on the political institutions which make and observe them. It is thus a study in international constitutional law and hardly an introduction to the subject. A student being so introduced by this book will find himself buried under a mass of, at first glance, irrelevant and disconnected material. Although it does clearly show the relation between this branch of the law and international rules, considerable basic work is necessary to draw a connecting link between them. However, Professor Sohn has admirably simplified the task by his copious notes and the references contained therein.

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