BOOK REVIEW

LOYALTIES by Daniel Patrick Moynihan. San Diego: Harcourt Brace Jovanich (1984). Pp. 96.

This latest book from Daniel Patrick Moynihan (the Senior United States Senator for the State of New York) is written in an informal, conversational style. As in a conversation, it is clear that the book reflects the author's subjective associations of ideas as much as any logical, temporal or sequential structure. This book was clearly not written in what one might call the academic or mandarin style, the style in which one usually casts the important topics he discusses. Rather, it is written with a deceptive simplicity and a personal approach and manages to present felicitously the author's own views. Of course, if Aristotle was, as Bertrand Russell has told us, the "first professor," his teacher, Plato, was the first (academic) writer to present fundamental questions in a conversational mode. Since most writers on today's basic issues in international relations are professors, we have become more used, than perhaps we should, to the Aristotelean style of presentation, especially in the context of the esoteric science of international "crisis management," than the Platonic or colloquial mode. In exposing one's thoughts to a wider public than the professoriat, it is, perhaps, important for an author to follow a more colloquial form; and Plato, through his Socrates, is still an unrivalled model even though much of Socrates' discourse seems more like thinking aloud than a presentation of an exhaustive analysis.

I. THE NUCLEAR BALANCE

The dust jacket tells us that in this book the author addresses three basic issues of the modern world: international peace, racism, and international law. The first topic might have been better described as a journey with the Senator in his pilgrimage of understanding as to what the nuclear arms race means to him. He does not comprehensively take up the wider issue of world peace—for example, organizing for a peaceful world, including the necessary political, social and economic agendas. Nor is the agenda of peacekeeping studied. What Senator Moynihan does is to specifically and critically review America's emerging and changing values regarding foreign policy where it connects with defense policy, especially those

values which underlie America's policy of nuclear deterrence ("second strike capability"). He is troubled by his perception of recent basic changes in our nuclear defense policy. In this context he recounts the interaction of his thoughts as they subjectively evolved, with his experience of senatorial politics regarding the MX problem. Indeed, this key issue provides the focus of the second chapter of the book. He presents his argument in favor of his vote in the Senate against funding the White House's plans to build the MX missile ("too large to conceal and too 'valuable' not to be targeted," p. 7), and cogently explains his disquiet, since he is persuaded that the MX missile represents a shift from "deterrence."

Starting from the premise of "crisis stability" ("the utterly essential consideration," p. 15), Senator Moynihan sees the MX as a major destabilizing factor in US-Soviet relations. His reason for this judgment is that if the Soviet Union had followed the United States' example and had deployed forces for the purpose of deterrence, then there would be little or no problem. But, he points out, this is not the pattern of US-Soviet relations. He writes (p. 15):

> But they [i.e. the Soviet Union] [have] not deployed their forces in a deterrent mode, as we [have] done. The size and number of their missiles could only imply a first-strike mode. This is to say, they are right out there in plain view, essentially undefended. They are highly, if not wholly, vulnerable to a first strike from the United States, but so long as the United States did not have a weapon capable of such a mission, the Soviet could, if they chose, keep calm. And they did. They kept on building, but not in a fit of panic.

The destabilizing effect on the MX system is that, while their utility is to mount a first strike capability, they are themselves vulnerable to destruction by a Soviet first strike. He tells us that "the phrase is 'use 'em or lose 'em.'" (p. 19) But, does this perception include continuing effectiveness, for the purpose of deterrence, of the other two supports of the United States' defense "triad"—the nuclear bombers (the "improved B-52's") and the new Trident submarines with their new D-5 missiles? Would not these, if the MX missiles were taken out, continue to assure a second strike capability?

But at the heart of the issue it would appear that Senator Moynihan, like the Roman Catholic Bishops in their 1983 Pastoral Letter on War and Peace, *The Challenge of Peace: God's Promise and Our Response*, tends to share Cardinal Krol's moral perception that while deterrence "may in fact have prevented nuclear war-

fare . . . the risk of failure and the physical harm and moral evil resulting from possible nuclear war remain[s]" (p. 14). He sees the Cardinal's 1979 testimony as being echoed in the 1983 Pastoral Letter's stress on "Catholic dissatisfaction with nuclear deterrence and the urgency of the Catholic demand that the nuclear arms race be reversed" (p. 14). This, at least, would appear to be the Senator's moral position, while his political position appears as a strictly conditional acceptance of nuclear deterrence based only on prudential grounds

But surely this is true of us all? Do we not, all of us, reject nuclear deterrence as a categorical moral value? No one can argue for the Truth, Beauty or Goodness of any nuclear missile—be it the Hiroshima bomb, the SS-18 or the MX. In our world today deterrence is an insurance: like all insurance it is merely a cost incurred through nothing more than prudential considerations. Why should anyone, otherwise, part with the dollars which go to pay the premiums? But, perhaps, at the heart of the difficulty is the fact that deterrence is only term insurance: it builds no equity.

In this chapter, too, Senator Moynihan takes issue with the Pentagon's proposal to develop and deploy laser-beam satellites designed to destroy Soviet missiles "at the booster stage," *i.e.,* after launching (p. 30). He sees this as an imprudent and impractical "escape from reality; the mentality of the video arcade" (p. 30). He takes the view that "there is only the remotest chance that even *one* of the satellites would work," (p. 31) but, at the same time, he asks us to "[c]onsider the heavens churning in nuclear inferno, while all those little dials and digital devices go blithely about their doomsday detail" (p. 31).[1] While he is thus skeptical of the effectiveness of the proposed satellites, he asserts that the "Soviet military will believe that *we will be able to bring it off*" (p. 31), and envisages a desperate Soviet first strike to pre-empt the satellites from being deployed. This reviewer wonders whether the Soviet military would be oblivious of the other two legs of the United States' triad. Be

1. The Economist, in a recent article *Getting da out of nyet*, THE ECONOMIST 13 (July 7, 1984), writes:

> The "Star Wars" program of anti-missile defences, which Mr. Reagan claimed last year would free the world from the threat of nuclear attack, is also under fire. Congress is unhappy at the $26 billion down payment needed just to get research under way, and worried because so many American scientists think the idea won't work anyway. Even the President's men are divided about the wisdom of a space race with the Russians.

that as it may, Senator Moynihan calls for a "commitment to a guarded reasonableness, to that spirit which is never too sure [that] it is right" (p. 31).

II. RACISM AND ZIONISM

As the Senior Senator for New York, Senator Moynihan has a special interest in the State of Israel and in supporting its special relationship with the United States. But long before he stood for election to the Upper House of the Congress, and when he was the Head of the Permanent Mission of the United States to the United Nations, he strongly championed the cause of that intrepid little country. It is of great interest, therefore, to follow him as he traces the history of a growing campaign of hate expressed with increasing venom in a series of United Nations General Assembly Resolutions, beginning November 19, 1975. The formula, reiterated like the political chorus of George Orwell's sheep, "Zionism is a form of racism and racial discrimination" (p. 36) or its equivalent, blare with the banality and venom of its originators. Senator Moynihan finds this verbal pogrom to have its beginning in the theoretical dilemmas of Russian Communism. Marxist ideology asseverates that the roots of all human relations and beliefs grow exclusively in a materialist soil. The means of production and the division of labor which evolve for the utilization of those inanimate instruments of production and for the distribution of the goods and services they put into society condition all other relations, ideas, beliefs and human perceptions. Religious, aesthetic and national beliefs and attachments, like family relations and affections themselves, are viewed as epiphenomena playing on the surface of the economic process. They have no reality independent of the socio-economic structures for which they are at once the excuse and the justification. They are seen simply as rationalizing or excusing distortions and contradictions in the economic systems wherein they are found. For example, chivalry (as *noblesse oblige*) is perceived as one of the excuses for the feudal system's distorted allocations of resources, commodities and command power in favor of the knightly class. Similarly, in pre-classical Rome, the power of the hearth-gods justified the power of the father which, in turn, was the needed system for managing the inherited farms through generation after generation.

The author argues that the persistence of ethnic identities testifies to the inadequacy of the Marxist theory. Religious and

national beliefs thus constitute the greatest threat to the internal unity of the Soviet Union and its hegemony over its empire. He points out that kinfolk of the Jews within Russia have created a nation state of their own outside the reach of the Soviet Union. Israel is an ideological rallying point and is a source of the continuing renewal of the religious and national identity of the Jews within the Soviet Union and its empire just as much as outside its borders. Soviet authorities thus perceive Israel as reinforcing the threat to internal unity—a threat created by bonds which do not wither away as epiphenomena should. Secondly, the State of Israel is perceived as a bastion of Western influence in an area into which the Soviet Union is anxious to expand. Hence, Senator Moynihan perceives that, in addition to the survival of primitive anti-Semitism which may still influence Soviet attitudes toward Israel (which he wishes neither to exaggerate nor discount), there are foreign policy and ideological motives for current Soviet anti-Israeli charges.

After the Six-Day War Moscow saw Zionism amongst its own Jewish population as a serious problem and as comparable with other nationalist movements which had provoked the Tsars and their Soviet successors to suppress and replace Zionism with more conformist attitudes beliefs and commitments. At that time the authorities orthodoxly dismissed Zionism as a link between American imperialism and the Israeli bourgeoisie. As the Senator said, "this required no ideological innovation" (p. 38). But the Soviet propaganda machine did not rest there, but evolved a whole new ideological attack.

Moynihan credits the roots of this new departure to a two-part article in the February 18-19, 1971 issues of *Pravda* which was "promptly" published as an English language pamphlet by Novosti Press Agency of Moscow (p. 40). He then credits Viktorovich Bolshakov, Deputy Secretary of *Pravda's* editorial board in charge of the paper's international department, with the authorship of the article. In it Bolshakov alleged that Zionists collaborated with the Nazis, kept order in Jewish ghettos and provided overseers for the death camps. Indeed, he alleged that the tragedy of Babi-Yar "will forever be a reminder not only of the monstrous barbarity of the Nazis but also of the indelible disgrace of their accomplices and followers—the Zionists" (p. 41).

This, the author tells us, was the background of the General Assembly's November 1975 Zionist resolution. As United States Ambassador to the United Nations, Moynihan set up a spirited

resistance. It was unavailing. Because he believed that the Soviet Union and the Arab states had overreached, he felt that their ability to command their usual majorities had been impaired. He states (p. 42):

> The time was at hand for the United States, *and the West*, to make clear that we would be loyal to those who stood with us. There needed to be rewards and punishments, both concrete and avowed. The new nations in particular were learning their way in a new world and needed to have it made clear that there are matters the United States took with profound seriousness—even if other nations do not.

The United States did not act as Moynihan advocated. He now sees, as he saw then, the Zionism resolution as being an opportunity for the Soviets to seize an initiative and condemn Israel in all the available organs of the United Nations by arraigning the leaders of Israel with the crimes for which the Nazi leadership had been punished at Nuremburg. Under the Ford administration the official United States policy in the General Assembly and the other political organs of the United Nations had been "damage control" (p. 44). With the Carter administration a new direction was invoked—"commitment" (p. 44). Basically this policy's premise was that the majority of the General Assembly "must be right—or at least partially right" (p. 44).

As a result of this new Carter direction, the United States voted on March 1, 1980 in favor of a Security Council Resolution condemning Israel for the "'flagrant violation' of the Fourth Geneva Convention"—in fact a charge of genocide (p. 45). The United States refused to disavow this vote. It brought a nemesis to one whose fatal flaw was an impenetrable naivété. Later, searching for scapegoats, President Carter blamed this vote for his losing New York, a key state, in the 1980 Presidential election. But the author sees in that vote, in the General Assembly, "the essential Carter" (p. 57).

In this triumph of Balshakov, furthermore, and the history behind it, Moynihan perceives the outlines of a sustained, worldwide ideological struggle with the "forces of liberalism" under incessant attack—"an attack that the West somehow avoids knowing about" (p. 57). He sees the present phase of this attack as consisting almost exclusively of a vilification of Zionism and Israel. As this program of vilification continues, the world should remember that Israel is the only democratic state in the Middle

East enjoying a multiplicity of political parties, free elections and an open society. Focussing on these issues, Moynihan focuses on a perceived lack of loyalties to the country, to a belief in freedom and to the traditions of liberalism. If the hostile campaign continues, will that loyalty be found?

III. INTERNATIONAL LAW

Reviewing the United States' reaction, under the two most recent Administrations, to breaches of international law by the Soviet Union and other countries—for example the invasion of Afghanistan, the seizure of the United States Embassy in Teheran and the forwarding of Soviet imperialist designs during the Carter Administration, and, more recently, during Reagan's presidency, the shooting down by Soviet interceptor aircraft of KAL-007 with the deaths of all on board, including sixty-one American citizens, and the Cuban/Soviet build-up on Grenada—Senator Moynihan sees a dangerous and misdirected trend in perceptions and policy. By reacting with bewildered and angry injury he commented that the Carter administration turned "out looking like the third act of *Rain*[2] with no sense of principle left intact" (p. 62). This was clearly illustrated in Carter's reaction to the Iranian seizure of the United States' embassy in Teheran, namely his aborted helicopter raid which, predictably, ended the United States' hopes for vindication through a unanimously favorable judgment of the International Court of Justice. It may be seen, indeed, as a paradigm example of the theme of *Rain*, of becoming one's adversary. The religiously inspired President fell to the level of the Soviet use and misuse of force; like the equally sincere missionary he became the target of the Soviet Judge's (Judge Morozov's) mockery and scorn as, indeed, his doppelganger in *Rain* became the target of the prostitute's contempt. Moynihan sees the Reagan administration as following down the same primrose path. He offers two examples: The Falklands Islands fight and the Grenada Mission.

Senator Moynihan reports that he urged, on the Senate floor, that Britain take its case against Argentina to the International Court of Justice. He also claims that this "argument had enough force for *The Times* of London to report it." He argued that the

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2. *Rain* was a Somerset Maugham story, turned into a play and a movie, in which a missionary, seeking to bring a prostitute to Christ, finishes up having sexual relations with her, thereby engaging her mocking contempt. Inevitably, he was driven to suicide. The prostitute, reinforced in her skepticism, returns to her sailor clients.

Court would rule the Argentinian conduct illegal. This would have been the result, he believed, that if "the United States then chose to support the British, *we* would be free to do so under the color of the Court's orders" (p. 92). With all respect to the Senator, one must disagree with his evaluation of the Falklands case. His premise is that it was identical with the *Hostages case*. In this later crisis situation the United States needed the Court's judgment because it, by reason of the Soviet veto in the Security Council, was unable to obtain a validation of its position from that central, key institution of the United Nations. The Soviet veto, in fact, forced the United States to seek the Court's endorsement of her position. By contrast, Britain had the Security Council Resolution it needed. Furthermore, once the Security Council had rendered its Resolution, it is highly probable that the Court would find a British application to be, in effect, redundant. A close analogy to the Falkland issue was the Court's rejection, in 1976, of the Greek application to it for interim measures in that country's dispute with Turkey regarding rights to submarine areas of the Aegean Sea. The fact that the dispute had been the subject of a Resolution of the Security Council induced the Court to refuse Greece's application.[3] Clearly

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3. Aegean Sea Continental Shelf Case, (Greece v. Turk.) [1976] I.C.J. 3 (Order of Sept. 11, 1976).

At page 12 the Court states:

37. Whereas the Court has cognizance of the fact that, simultaneously with the proceedings before it in respect of the request for interim measures of protection, the United Nations Security Council also has been seized of the dispute between Greece and Turkey regarding the Aegean Sea continental shelf; whereas, on 10 August 1976 (the day on which the application and request for interim measures were filed), the Permanent Representative of Greece to the United Nations wrote to the President of the Security Council requesting an urgent meeting of the Council in view of "recent repeated flagrant violations by Turkey of the sovereign rights of Greece on its continental shelf in the Aegean"; and whereas the Security Council discussed the question at meetings held on 12, 13 and 25 August 1976, with the participation of the representatives of Greece and Turkey;

38. Whereas on 25 August 1976 the Security Council adopted by consensus a resolution (resolution 395 (1976)) by which, *inter alia*, the Security Council urged the Governments of Greece and Turkey "to do everything in their power to reduce the present tensions in the area so that the negotiating process may be facilitated," called on Greece and Turkey "to resume direct negotiations over their differences," and appealed to them to do "everything within their power to ensure that this results in mutually acceptable solutions";

. . . .

41. Whereas both Greece and Turkey, as Members of the United Nations, have expressly recognized the responsibility of the Security Council for the maintenance of international peace and security; whereas, in the above-mentioned resolution, the Security Council has recalled to them their obligations under the United Nations

the Court would neither second-guess the Council, nor review a matter of which the Council was concurrently seized, nor give a pronunciation on an issue already resolved by the Security Council.

In the Falklands dispute, Britain had the support of a Security Council Resolution denouncing the Argentinian invasion, requiring Argentina to withdraw its forces from the islands and calling upon both parties to settle their differences by negotiation. What then could the Court do? Simply echo the Security Council? Experience has shown that, when presented with effective action by the Security Council, the Court will hold its hand. Of course, should unmeritorious conduct occur subsequently to the Security Council resolution, the Court will, in appropriate cases, exercise its lawfully conferred competences. It will, in such cases, resolve an adversarial dispute giving rise to its contentious jurisdiction. (To this reviewer Senator Moynihan's proposal looks rather like a suggestion that Britain should have unilaterally applied to the Court for advice and guidance on her legal rights and further lawful conduct; but this is a jurisdiction with regard to states which its Statute, perhaps erroneously, withholds from the Court, should states mistakenly seek its advice).

With regard to the Court's jurisdiction, however, two further points should be made with regard to the Falklands crisis. First, Argentina has never adhered to the Optional Clause of the Court's Statute which confers compulsory jurisdiction on the Court, so the Court could not summon Argentina at Britain's unilateral behest. Second, Britain has, on a number of occasions since 1945, sought agreement with Argentina to take to the International Court of Justice the quarrels between the two countries concerning not only the Falkland Islands and South Georgia, but also the South Sandwich Islands and the disputed sector of Antarctica to the south of Argentina (including the Palmer Peninsula (Graham's Land)). It goes without saying that Argentina has always refused to litigate these

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Charter with respect to the peaceful settlement of disputes, in the terms already set out above; whereas, furthermore, as the Court has already stated, these obligations are clearly imperative in regard to their present dispute concerning the continental shelf. . . .

. . . .

Accordingly,

THE COURT

Finds by 12 votes to 1, that the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute. . . .

differences. Furthermore, if Argentina's then-ruling military junta had informally reversed itself and privately expressed a willingness to go to the Court at the thirteenth hour, the British Government might have justifiably suspected it of an invidious motive—to play for time. Having rejected the Court's jurisdiction so often, for so long, so consistently, so arrogantly and so condignly, a sudden reversal by Argentina, after its landing on the islands, might justifiably have been suspected as being no more than a *ruse de guerre*—Argentina could have sought to use time consumed for preparing briefs and arguments for fortifying its positions, for reinforcing its troops, for "digging-in" in the islands. Finally, in his presentation, Senator Moynihan does agree that (p. 92):

> The validity of the Argentine claim to the "Malvinas" has nothing to do with the illegality of its action. Under the Charter, Argentina has forbidden itself the use of force in settling such disputes. The Charter forbids it, and Argentina of its own free will submitted to that restraint. Britain was entirely in the right, and free to take any action it wished.

As a signatory to the Charter the United States was equally free to honor its contractual obligations arising from Britain's stipulation in her lease of a base on the island of Ascension (which became a key staging point of the British forces) to provide supplies, fuel and military stores of all kinds when the British military had a need to use the base for lawful purposes. Of course, if the British had been guilty of aggression in seeking to remove the Argentinian forces, the leases stipulation would have been inoperative as, at least under the circumstances of the case, being contrary to the peremtory norm (the *jus cogens*) of international law which invalidates agreements to engage in, or support, acts of aggression. But, in the Falklands Islands case, the Security Council did not find Britain to be the aggressor. Accordingly, a refusal to honor that agreement would, especially in the face of the flagrant illegality of the Argentinian invasion, have rendered the United States delinquent on the basis of its honoring a lawful international contractual obligation.

Professor John Norton Moore has written, in a very scholarly study entitled *Law and the Grenada Mission*,[4] that in addition to the mission's justification as a rescue of American citizens

4. J. MOORE, LAW AND THE GRENADA MISSION (1984) [hereinafter cited as MOORE].

threatened with the possibility of being taken hostage (*à la* the Teheran Embassy *débâcle*) or worse, the United States was justified in so acting by virtue of Articles 51 and 52 of the United Nations Charter (collective self-defense with the Organization of the Eastern Caribbean States) and Articles 22 and 28 of the Charter of the Organization of American States.

There is a further argument supporting the Mission's lawfulness which seems to have been overlooked by American skeptics of the legality of the Grenada Mission, but who approve of it as successful *Realpolitik*. That argument is squarely based on the letter of October 24, 1983,[5] from Sir Paul Scoon, the Governor-General to Grenada, to the Organization of Eastern Caribbean States, invoking their help. Their are questions as to whether Sir Paul had the constitutional authority to write such a letter, and whether the other countries of the OECS, and, in addition, Jamaica and the United States, were authorized, aside from the United Nations Charter, the OAS Charter and the OECS Treaty of Establishment, to respond positively to that appeal for help. International law has long recognized the right of an incumbent government to seek help from its friends to maintain domestic order as well as resist foreign aggression. A foreign state is not (aside, possibly, from the justified issues of humanitarian intervention, for example, for the validity of which some publicists have contended) entitled to intervene at the behest of an individual citizen of the target state. But, of course, international law allows such an intervention if it is made at the request of a lawfully constituted public authority with valid domestic competence to issue such an invitation. The question, accordingly, becomes one of whether Sir Paul had the constitutional authority to write such a letter in his official capacity as Governor-General, or whether his letter was no more than an ineffective cry for help from a private citizen of Grenada.

In those independent sovereign states of the Commonwealth in which the office of Governor-General (or Governor) has been retained, that officer is not the representative of the British Government, but the personal representative of the Monarch as Queen of the country concerned—*i.e.*, Queen of Australia, Canada, Grenada etc. The Governor-General does not represent her as the Queen of the United Kingdom. Nor does he represent the British Govern-

5. This letter is, of course, a key document in the issue of illegality. It is reprinted as Appendix I of MOORE, *supra* note 4, at 87.

ment. Where, constitutionally, the monarchy remains and the *Westminster Model* provides the blueprint of government, the powers of the Executive Branch are exercised by a cabinet which is both accountable to, and can command a majority in, the Legislature. Hence the Monarch (or the Governor-General) has no day-to-day power. Nor has she real power in times of stable party politics—the leadership of one party, or of a coalition of parties, will provide the individuals entitled to be called to form the government of the state. But when these preconditions of stability break down, constitutional doctrine provides that the Monarch, or her representative, may exercise the "reserve power of the Crown." In an interesting article chiding Labor Party members of the British Parliament, as well as some members of the Government Party, for misperceiving Sir Paul Scoon's powers and obligations, *The Economist* pointed out that, "Sir Paul is the only remaining link with the constitutionality of a country that lost the rest of its constitutional framework in 1979, and last month ceased even to have an internationally recognized government."[6]

In addition to the powers of the Governor-General through his commission and the common law, it should be pointed out that his authority could be considered as continuing under Prime Minister Bishop's "People's Laws" of 1979, especially under People's Law No. 3. We may, further, refer to the Grenada constitution of 1973 which established the office of Governor-General. The relevant provisions are Articles 57, 61 and 69. The first of these, Article 57, provides:

> (1) The executive authority of Grenada is vested in Her Majesty.
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> (2) Subject to the provisions of this Constitution, the executive authority of Grenada may be exercised on behalf of Her Majesty by the Governor-General either directly or through officers subordinate to him.[7]

Then Article 61 provides:

> [I]f the Governor-General, acting in his own deliberate judgment, considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers [emergency appointment powers of the Prime Minister function] in his own deliberate judgment.[8]

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6. *See Grenada: More Light on It,* THE ECONOMIST 42 (Nov. 5, 1983).
7. Constitution of Grenada, *reprinted in* MOORE, *supra* note 4, at 52-54.
8. *Id.*

Finally, Article 69 provides:

> Subject to the provisions of this Constitution and of any other law, the Governor-General may constitute offices for Grenada, make appointments to any such office and terminate any such appointment.[9]

Whether or not Sir Paul Scoon acted under these and other relevant articles, while his commission remained in force and while the monarchy was not abolished, the inherent, common law and customary constitutional law powers of his office ensured the validity of his authority to act for the common good of his country in the emergency which actually supervened.

This reviewer would also like to add a further comment he made in a letter he sent to the *New York Times* (which was not published by that august publication) on the issue of the legality of the Grenada Mission. After stressing the constitutional common law of many Commonwealth polities such as Grenada, he pointed out that there is a great unenlightment, in the United States, of Commonwealth matters. Had there been the needful light, the difficulty experienced here of grasping the role of Sir Paul Scoon, his competence, and indeed his duty, to send the crucial appeal for help, and the consequential legality of the action by the United States, Jamaica and the States of the OECS would not have occured. There would not have been the misinformation which was found on all sides. Had needful enlightment existed, the regrettable sentiments quoted (in a mood of criticism and displeasure) by the Senator from one of the most influential newspapers in the United States would not have been published in even the most parochial and bucolic newspapers in the nation. Senator Moynihan writes, "A *Wall Street Journal* editorial at this time began by recounting a dinner table conversation in which a guest declared, 'We are only going to be able to talk sensibly about Grenada if anyone here who is an international lawyer agrees to keep his mouth shut.'"

The benighted utterance by the dinner (not the wedding) guest would have been obviated, this reviewer believes, especially among the sophisticated circles which provide the *Wall Street Journal* with its readership and its newsmakers, if the Department of State were to overcome an ancient prejudice and install a Commonwealth desk in its hierarchy. This increasingly essential piece of Foggy Bottom furniture has never existed, nor has an officer ever been required

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9. *Id.*

to gain the necessary proficiency to man it. As a result, no Department of State spokesman was equipped to explain the issue of legality in terms of Sir Paul Scoon's essential role.

Around the world today there are many Grenadas, not only in the Caribbean, but also in every ocean of the globe. In many of them anarchy may, one day, supervene. Will there again be the same discordant and uninformed outcries claiming unlawful conduct if the United States were to intervene at the behest of another beleaguered Sir Paul Scoon? Clearly, a field of knowledge of the morality of lawful behavior is awaiting the plough of insight and clarity of thought.

IV. LAW AND MORALITY

This book's most important contribution, so this reviewer believes, has nothing to do with specific legal points which, in comparison with its main thrust, become relatively unimportant. It is Senator Moynihan's passionate commitment to the basic value of obedience to law. This is not itself a legal matter, but one of morality. Long respected and adhered to in America, the moral commitment to international legality is an essential cement for the international community, and one which exchanges anarchy for common action, and *Realpolitik* for peace. In general, obedience to law is an independent moral value. It takes effect independently of an individual's concrete values such as commitments to the institution of marriage, family, social protection from many of life's handicaps or misfortunes, equal rights or any other projection of society's choices into legislation. For obedience to law may call upon the individual to comply with rules with which he strongly disagrees. While many people, from Emerson to the present, have engaged in civil disobedience and have refused, conscientiously, to obey a law they morally reject, they have, equally conscientiously, accepted their lawful punishment as a necessary result of their disobedience. But Senator Moynihan's vignette from the *Wall Street Journal* does not reflect such a conscientious refusal such as Emerson's; rather, it is a sentiment that international law does not operate constructively to further world community interests, but simply reflects a restraint on the United States' freedom to further her interests in the world arena. Such a view sees a Machiavellian advantage in disregarding law. This is not civil disobedience, but straightforward lawlessness. Senator Moynihan calls the United States to her traditional values of identifying her global

interests with international law and her long-established morality of obedience to law. This is not only a categorical value but also a prudential one. Obedience to law induces rational behavior and enlightened self-interest as well as the base values of peace and cooperation. In his final statement of loyalty to rationality and legality Senator Moynihan's book makes an important contribution to current ideas. And this reviewer hopes he will be persuasive in the Senate of the United States of the prudential merit of the proposition that the values of legality are more constructive, and more in the country's interest, than those of Machiavelli, the Medicis and the Borgias. The anarchic politics of self-interest which those men pursued, despite their hopes and indeed their visions, led to the abasement of Italy[10] and the passing of greatness to other countries which emerged as the leaders of civilization through the binding of their diverse communities into their national legal systems through their acceptance of the moral imperative of obedience to law and the performance of legal duties.

L.F.E. Goldie

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10. In her important new book, THE MARCH OF FOLLY, Barbara Tuchman writes of the six Renaissance Popes (including two Medicis and two Borgias) as, through their follies giving rise to the schism of Christendom and the inevitable triumph of Protestantism. B. TUCKMAN, THE MARCH OF FOLLY (1984). But our retrospective appraisal may be anachronistic. Those Popes were elected, not for their foolishness any more than for their holiness, but for their political acuity. In terms of the value system of the time, they were men of respect. Their parallel in England, namely Richard III, for example has passed into the oppoprium of history despite his bravery as a soldier, the thoroughness of his political logic and his contempt for the restraints of morality. Sir Thomas More in his counterblast to Machiavelli's *Il Principe*, summed up the delusion and limitation of purely political solutions when he wrote of "England's 'Black Legend'": "Where he went abroad, his eyes whirled about, his body secretly armoured, his hand ever on his dagger." T. MOORE, THE HISTORY OF KING RICHARD THE THIRD, *reprinted in* 2 COMPLETE WORKS OF ST. THOMAS MORE (R. Sylvester ed. 1963).

Fortunately for England (and Britain) the healing through obedience to law came with the Tudors. More generally, the issue was not one of the "march of folly" but of the lack of principle and the loss of morality.

CULTURES IN COLLISION—A CANADIAN-U.S. CONFERENCE ON COMMUNICATIONS POLICY. Foreward by Goodwin Cooke. New York: Praeger, 1984. Pp. v, 197.

CULTURES IN COLLISION represents the collected works of the Canadian-U.S. Conference on Communications Policy which was held in New York in March, 1983. Although the book does not attempt to resolve the complicated disagreements between Canada and the United States over broadcast policy issues, it does present a solid base of policy alternatives from which future negotiations can evolve. Given the current standstill in Canadian-U.S. negotiations over broadcast policy harmonization, this is indeed no minor accomplishment.

The policy dispute in question stems from not only the profound legal and historical differences between Canada and the United States, but from current and projected differences in the two countries' approaches to communications policy (p. ix). Indeed, as Ambassador Goodwin Cooke points out, "[t]he innumerable similarities between the two nations often conceal these differences . . . (p. ix). Resolution, or containment of the broadcast dispute, [therefore,] will require mutual appreciation of the differences in communications law, practice and policy" (p. x).

CULTURES IN COLLISION is a useful introduction that will enable the reader to appreciate the difference inherent in this complex debate. The book addresses four principle areas: an historic comparison of Canadian and American approaches to broadcast policy (Frank W. Peers, p. 11-34); sovereignty and television (Mark J. Freiman, p. 104-21); the impact of new technologies on Canadian-U.S. broadcast relations (Thomas H. Martin, p. 181-97); and the border-broadcasting dispute itself (Theodore Hagelin and Hudson Janisch, p. 40-99). The book also includes distinguished submissions by the Honorable Allan E. Gotlieb, John Meisel, Stephen Sharp, Leslie G. Arries, Jr. and Yale Braunstein. Each author's contribution is uniquely and equally valuable to the understanding of the broad range of issues addressed.

I.

After a brief foreward concerning Canadian and U.S. communications policies and the impact of new technologies in general (written by Ambassador Goodwin Cooke), Canadian Ambassador

Allan Gotlieb addresses "Culture and Communications in the 1980s" (p. 1). Gotlieb's remarks strongly indicate that Canada has opted for a new broadcast strategy for the '80s. This new strategy includes such policies as a dedication to the "expression of programming choice" and the "strengthening of Canadian programming" (p. 8). These new directions, however, are contingent in the former case upon the success of future international agreements and in the latter case upon the availability of larger amounts of public funding.

Canada's new strategy is also marked by an openness toward the United States which will hopefully promote greater bilateral discussion of communications issues. As Ambassador Gotlieb appropriately remarks, "[a]t a time when many nations are erecting new barriers to trade, Canada is turning toward greater openness" (p. 9). Given recent breakthroughs in Canadian-U.S. cooperation on the use of domestic satellites for transborder communications, this new policy may indeed be quickly becoming a reality. Gotlieb concludes by emphasizing that Canada has entered a new era; one that is "perhaps the most exciting" in the history of Canadian television broadcasting (p. 10).

Chapter two, written by Frank Peers, is a comparison of the origins and historical perspectives of Canadian and U.S. broadcast policies (p. 11). Peers explains the current divergence in the two nations' policies by emphasizing the differing Canadian and U.S. perspectives on the value and benefits of a free market distribution of broadcast resources. For Canada, Peers feels a growing discomfort over the vigor with which free market forces are turning Canadian communications into a U.S. subsidiary operation. The author explains that it is the need for Canadian sovereignty in the development of future broadcast policies that has forced the Canadian Government to intervene on behalf of the communications needs of all Canadians.

For the United States, Peers suggests that the free market distribution of broadcast resources has never been "seriously questioned" (p. 29). He relies for this analysis on the alleged inability of the U.S. government to appreciate the need for some level of safeguarding for the sovereignty of Canadian broadcasting (p. 32). While the author concludes that such safeguards are themselves unadvisable, both because they are unlikely to work and because of their implications for U.S. relations, the question remains how Canada can avoid safeguard policies, especially in light of the

author's strong belief in the need for a pervasive, sovereign government presence in the Canadian broadcast industry.

In chapter three, Theodore Hagelin and Hudson Janisch examine the border broadcasting dispute. Their discussion is divided into three parts. First, the development of the border broadcast dispute between Canada and the United States is highlighted chronologically (p. 42). Second, constraints on, and contradictions within, U.S. and Canadian domestic communications policies are considered (p. 56). Third, a model for analysis of the border broadcasting dispute based on a breakdown of the distinct concerns of the actors within the industry is proposed (p. 74).

Hagelin and Janisch identify the exportation of U.S. network programming by border broadcast station affiliates into Canadian markets as the principal structural problem in the dispute (p. 87). Two proposals are offered to deal with this problem. They are: (1) that restrictions such as C-58 (the program which limits the ability of Canadian advertisers to deduct from income taxes the expenses of advertising on U.S. stations where the advertisements are directed at a Canadian audience) not apply to programming produced by U.S. border broadcast stations; and (2) that the network programming be distributed directly to Canada via satellite links to cable system lead ends (p. 88).

Although these proposals do not embrace the interests of all affected parties, they provide a solid point of departure for further discussion. More importantly, especially in the case of the latter, they incorporate newly evolving technologies into the on-going negotiating process. This type of problem solving clearly belongs at the forefront of the viable policy alternatives. Such suggestions encompass the means of both resolving the current deadlock, and easing the pressures for non-resolution inherent in the fears of unknown technologies.

In chapter four, Mark Freiman addresses "Consumer and National Sovereignty in Domestic and International Broadcasting Regulation" (p. 104). According to Freiman, who stresses the need for Canadian communications policy to "produce programming at all cultural levels" (p. 117), the path to resolving Canadian policy conflicts is not through the elevation of consumer sovereignty. Rather, as an alternative to deregulation or a general free market approach, Freiman postulates that the most likely and most practical method of achieving programming at all cultural levels is through the use of generally funded independent public national

broadcasting systems (p. 117). In short, Freiman takes the arguably controversial position that government regulation of broadcasting is more in line with viewers' true interests than individual consumer choice through the market place.

In a critique following the Freiman discussion, Glen Robinson offers support for the elevation of public broadcasting, but then criticizes Freiman for not being faithful to his own principles by balancing the interests of national sovereignty against consumer sovereignty (p. 127). Robinson argues that if Canadian cultural sovereignty and the erosion thereof through U.S. programming dominance is really at issue, then the establishment of a board of censors is perhaps advisable (p. 127). Such a board would screen foreign-made programs carried on Canadian broadcast stations and cable systems. While Robinson expresses discomfort with a scheme which promotes censorship, he clearly also finds those discomforts outweighed by the projected gains for Canadian cultural preservation (p. 128).

In chapter five, John Meisel and Stephen Sharp address broadcast regulation in Canada. Working from an historical perspective, Meisel contrasts the Canadian need for regulation with the American need for deregulation. Meisel maintains that government presence in Canadian broadcasting is not only a current public mandate, but one which has deep historical roots. This being contrary to the history and demonstrated needs of American broadcasting, there must and always will be fundamental differences in Canadian and U.S. approaches to the goals and methods of broadcast regulation.

Chapter six, by Leslie G. Arries, Jr., presents valuable insight into the position of border broadcasters. As a U.S. broadcaster who has participated extensively in the effort to resolve the lingering policy dispute, his presentation shows a clear appreciation for the cultural issues which underlie current Canadian policies. Even given this level of understanding, however, Arries does not sympathize with Canadian interests to the extent of such "unfair and one-sided" policies as Bill C-58 (p. 149). Arries postulates that such legislation is not only bad for U.S.-Canadian relations, but is not effective at promoting the very goal for which it was developed, namely, the promotion of indigenous Canadian programming. As an alternative, Arries urges the Canadian Government to use sources of funds such as cable systems profits to support and foster the Canadian program production industry (p. 149).

In chapter seven, Yale Braunstein examines the economics of advertiser-supported television in Canada and the United States (p. 152). Braunstein suggests that neither program funding, nor production, will be affected by Canadian policies aimed at the advertising medium (p. 158). Rather, those programs both proposed, and currently in effect, operate most significantly as a means of actually diverting income from U.S. broadcasters to Canadian stations. The real irony of the situation, however, is that according to Braunstein's econometric analysis, there is no evidence of any significant negative impact on the revenues of the Canadian stations the current policies are principally aimed at affecting. Braunstein concludes, therefore, that the major problem is the propensity of Canadian television viewers to watch U.S. programming, not the propensity of Canadian television broadcasters to seek access to the Canadian market through U.S. station affiliates (p. 159).

Finally, in chapter eight, Thomas Martin analyzes the impact of "New Techniques and Future Technologies on Canadian-U.S. Broadcast Relations" (p. 181). After a careful examination of various scenarios designed to illustrate possible future sources of conflict inherent in the current drive toward advanced communications technologies, Martin is both practical and open in concluding that while the free market evolution of advanced technology may be legitimate, "there is no guarantee that wide-open competition and entrepreneurial spirit will lead to happiness" (p. 197). For that reason, as well as the recognition that government has a clear role to play in communications technology development, Martin prefers to see future technology breakthroughs preceded by bilateral agreements governing the international exploitation of new systems.

II.

CULTURES IN COLLISION is a book with a title that expresses most appropriately the sentiments of those familiar with the Canadian-U.S. communications policy debate. It is not only a collision which affects one of the largest and fastest growing U.S. export service industries, but one that touches the basic social and moral fiber of our two societies and the forms of government we have elected to represent those views.

Whether the evolution of Canadian and U.S. policies will achieve an effective assimilation of the competing forces addressed in this book, however, is not the immediate concern. Rather, of highest priority, and for which this book speaks most loudly, is the

need for a detailed and comprehensive look at what possible solutions exist within the realm of the realizable alternatives.

—Ed.