

## Neo-Neutrality (Book Review)

Phillips Bradley

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Reference, to be sure, is made to pages in Volumes 44 and 45 of the Congressional Record for Congressional Discussion on the Amendment. In the light of what might be considered a tortured interpretation of the words, "from whatever source derived" by the Supreme Court in *Brushaber v. Union Pacific R. R.* (240 U. S. 1) and other cases, and the mischief that has resulted from such interpretation, selective references to the Congressional Discussion might have been included, verbatim, and these would have been quite enlightening.

This volume belongs in any tax library and the author merits the gratitude of tax practitioners for simplifying a monumental task of investigation of any tax problem.

BENJAMIN HARROW.\*

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NEO-NEUTRALITY. By Georg Cohn. Translated from the Danish by Arthur S. Keller. New York: Columbia University Press, 1939, pp. x, 388.

Dr. Cohn, Chairman of the International Law Division of the Danish Ministry of Foreign Affairs, offers here an unusually stimulating and challenging critique of traditional concepts of neutrality. That such a volume as this is a timely contribution to an age-old problem, become again acute, needs no emphasis. What makes it particularly important is its refreshing independence of viewpoint and its sharp analysis of doctrines both old and new.

The author devotes over two-thirds of his study to a searching appraisal of the legal background. He reviews, historically and analytically, the traditional concepts of neutrality, the technical problem of organizing the relations of belligerents and neutrals, and the relations between the idea of aggression (and the classification of war in general) and neutrality. He points out how, during the long evolution of the theory and practice of neutrality, certain concepts became so widely recognized that a "law" of neutrality was, in the nineteenth century, on the way toward general recognition. But he points out how most of these concepts were of an essentially negative character. On the one hand, the status of neutrality depended in the last analysis on the will of the belligerents. What privileges were enjoyed by neutrals were concessions granted by the states at war, not assertions of right substantiated by the action of the neutrals themselves. Only in the Armed Neutralities of 1780 and 1800 was there any concerted attempt on the part of neutrals to vindicate their determination to stay out of war. On the other, Dr. Cohn shows how far the "law" was a function, indeed a product, of changing conditions of trade and transport during the past three or four centuries. The expansion of commerce, the shift from sail to steam, the new technology of war which utilized an increasing range of products, all contributed to sharpening the divergence of interest and reflected in the constant attrition of neutral "rights". The whole process culminated in the War of 1914 when what had been thought of as reasonably stable rules of mutual conduct were ground out in the hopper of military necessity.

After 1919, new theories seemed at first to offer a substitute for traditional

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concepts of neutrality. The Covenant of the League of Nations and other treaties seemed to afford the basis for discarding the concept altogether in favor of international action to keep the universal peace. Conflicting ideas were, however, not fundamentally resolved. The prescriptions of the Kellogg Pact proved illusory in their practical operation. The principles of the Geneva Protocol, based on the definition of aggression, failed to provide a workable basis for genuine international cooperation to suppress war. Nor have later formulas for defining aggression and implementing the machinery for joint action against aggressors stood the test of a persistent will to expansion by strong states at the expense of the weak.

The logic of events has, therefore, demonstrated the importance of reviewing the inherent legal and practical difficulties in avoiding war. A general international interest in law and order has not yet become sufficiently widespread to justify the idea that states will not be confronted by the necessity of protecting by their own action non-participation in war. And, since war is an economic and social as well as psychological dislocation of the true purposes of the State, there is a real interest in avoiding it. Traditional neutrality offers no guarantee; what is needed is a positive policy designed to insure, as far as possible, non-involvement for those States not directly participating.

Such a policy Dr. Cohn outlines in his analysis of "Neo-Neutrality". It is based on a rejection of the 19th century doctrine of strict impartiality on the part of neutrals. He points out that Grotius and his immediate successors distinguished between just and unjust wars as a basis for determining neutral attitude and action. Dr. Cohn would hold all wars unjust. Hence neutrals have no obligation toward either belligerent; they must act concertedly to prevent the spread of the war. Economic sanctions, cooperatively undertaken, are one means at their command. Whatever steps will lead to the quickest possible cessation of hostilities is in the interest of the neutrals and justifies whatever partiality may hasten that objective. "The system of war-prevention should be a development of the neutrality policies of the countries at peace, not of the war policies of the great military powers."

This theory suggests, although the author does not analyze the question in detail, that economic discrimination is an effective means of neutral action. That question confronts this country at the moment—not, however, from the point of view which Dr. Cohn elaborates. For prospective discriminatory action is all too patently based on the profit motive. And it is, furthermore, a purely unilateral action. The United States has a unique opportunity—and a real responsibility, in terms of ending the menace of war, to present-day society—to lead in the formation of a real League of Neutrals. Such a league, designed not only to avoid involvement but to stop war, might well prove the most effective instrument for ending the continuous and increasing hazard to the progressive attainment of the conditions of a lasting peace. There is a real interest on our own part in a settled world. That interest needs assertion and vindication today even more clearly than in 1914. Neither profits nor propinquity of feeling affords an excuse for abandoning it. If discrimination is to be practiced, there is only one ground, in morals and so in law, on which it can

be justified. Dr. Cohn has stated that justification, with forthright vigor and an appraisal of the alternatives as unequivocal as it is incisive.

PHILLIPS BRADLEY.\*

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DEFENDING AND PROSECUTING FEDERAL CRIMINAL CASES. By Theodore W. Housel and Guy O. Walser. Buffalo: Dennis & Co., Inc., 1938, pp. xciv, 1213.

The authors set out to combine into one undertaking the principles and details of federal criminal substantive and adjective law. They then supplemented this combination by annexing to the various sections of the volume suggestions which are in effect "practical aids" to lawyers in the field of federal criminal law. In view of the task's magnitude, the scope of which might well encompass several volumes with annual supplements, it is surprising to see the degree of success achieved by the authors.

The volume begins with a somewhat discordant note in the form of an introduction which includes, in part, the general subject of judicial obligations in the enforcement of criminal law. The authors then properly and capably proceed to the topics of jurisdiction, criminal responsibility, prosecutive agencies and the federal courts system.

The book contains an excellent dissertation on the physical requirements of the form and substance of an indictment and a somewhat smaller review of prosecution by information. It must be noted that the latter form of prosecutive procedure is increasing in importance in view of the enlarged area of conduct regulated by criminal law.<sup>1</sup>

A rather unusual appendage to a law text may be found in two interesting chapters, "United States Attorney's Preparation for Trial" and "Defendant's Preparation for Trial". The utility of such chapters cannot be over-emphasized for they contain the practical hints of the authors' experiences. It is interesting to view the approach recommended by the authors in the preparation of a defense in a criminal case. "Experience indicates that it is useless to pose the categorical question to the defendant as to whether he is guilty or not," state Housel and Walser. "Defendant's counsel will for the practical purposes of trial preparation assume the technical guilt of the defendant and prepare accordingly."<sup>2</sup>

In short, within the confines of one cover may be found a close review of federal criminal procedure from the moment a prosecution is initiated till such time as twelve persons who are strangers to each other agree on something so controversial as the liberty of a person. In addition, the volume contains an adequate explanation of appeals, writs of *certiorari*, and those alliterative hopes of every prisoner at the federal dock, pardon, probation and parole. An ade-

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<sup>1</sup> Hall, *The Substantive Law of Crimes* (1937) 50 HARV. L. REV. 616.

<sup>2</sup> At p. 431.