

BOOK REVIEWS

POWER AND POLICY. By Thomas K. Finletter. New York: Harcourt, Brace and Company, 1954. Pp. viii, 408. \$4.50.

Note: The following is the substance of remarks by Professor Leach and Secretary Petersen at a Book Program on February 9, 1955, at the University of Pennsylvania Law School.

AN AIR FORCE CONSULTANT'S REVIEW

Thomas K. Finletter is a student and participant in American Government, particularly those aspects dealing with foreign and military policy. As Chairman of the President's Air Policy Commission of 1947 he with his colleagues produced the "Finletter Report" on *Survival in the Air Age*. During his tenure as Secretary of the Air Force, 1950-53, he was the civilian custodian of a major segment of national power. This present volume, "*Power and Policy*," might well be entitled *The Second Finletter Report*. If it be true as often stated that wars are not won, but lost; and if this includes cold wars and part-way wars as well as hot wars, these products of Mr. Finletter's mind and pen may well save the United States from those disastrous mistakes that have caused nations to fall and civilization perish.

The book is divided into four Parts, which I should describe as follows :

- Part I: Strategy to protect the United States and NATO against the big-war threat posed by the Soviet Union armed with atomic weapons.
- Part II: Strategy to conduct the struggle against Communism in the East.
- Part III: Military policy and forces required to support the global strategy of the United States, as defined in Parts I and II, and an evaluation of existing policy and administrative machinery.
- Part IV: The search for peace through collective security and disarmament in the age of nuclear weapons.

I propose to deal only with Part III which, though largely neglected by the reviewers and commentators, seems to me the book's most significant contribution. Anything that may be written about strategy in Europe or Asia necessarily deals with the political alignments of the moment and the current state of technological progress. Since these can and do change rapidly, the first requirement for a sound global policy is a defense mechanism capable of firm decision and rapid change. If our decision-

making process is effective we may make an occasional error, but we can correct it as defects emerge or new factors appear in the equation. However, lacking an effective decision-making process, we cease to be masters of our fate. The strength of a giant is useless if his befuddled brain leaves him in a constant state of hopeless indecision. Goliath, or his current national equivalent, is unlikely to survive under such circumstances.

Mr. Finletter's Part III, "U. S. Military Policy," is a shocker. It is *testimony*, not opinion, from one who as Secretary of the Air Force has seen the inner workings of the Department of Defense. Nearly everything he says has been published at one time or another in leaked information to the press; but one could never be sure that these items were the truth, and one could be very sure indeed that they were not the whole truth. Furthermore, these items have never been put together to form a coherent pattern. Thanks to Mr. Finletter's courage, initiative and analytical ability, this has now been done.

Ex-Secretary Finletter is a Democrat. But he served in the Department of Defense when the words Democrat and Republican had very little significance. His superior, Secretary of Defense Robert A. Lovett, was a Republican working under a Democratic president. Among his group of advisers from civilian life there were Republicans (including myself) and Democrats, and no attention was paid to this political differentiation. This book of Mr. Finletter's is no political diatribe by a disgruntled lame duck. It is an impeachment of practices and failures of Democrats and Republicans alike.

I should like to mention three items of specific testimony presented by Mr. Finletter.

First, he says that the Air Force and the Navy are building two competing and duplicating weapons systems to perform the same air-atomic mission, at a total cost of the order of \$12 billion annually and that there has been no decision as to what part, if any, the carrier-based planes of the Navy are to play in the operation.

"There is duplication in the planning for the NATO Air-Atomic mission. The U.S. Air Force regards itself as having the whole responsibility; it welcomes such help as the Navy may provide; but it is not free to give up any part of its task. The Navy also is preparing to take part in the operation but its responsibility is not fixed. . . . *It duplicates forces for the same task, and therefore wastes money—and this duplication runs into billions of dollars every year. . . .*

"Now the point about this problem is not that a wrong decision has been made as to the respective roles of the Air Force's land-based planes and the Navy's carrier-based aircraft, but that *no decision at all has been made*" (p. 203). (Italics supplied.)

Thus when the author seeks to determine the proper level of annual defense appropriations he has to place the figure of \$12 billion for the Air-Atomic mission in an indeterminate status between the Navy and the Air Force

with a note that this amount is "to be allocated to Navy or Air Force after a decision by the President on recommendation of the Secretary of Defense as to the best method of carrying out the NATO Atomic-Air operation" (p. 224).

There is confirmatory evidence on this subject to which Mr. Finletter's book does not refer. In the spring of 1953 the Boston Herald, puzzled by a statement made in a Navy League publication, wrote to the Secretaries of the Navy and the Air Force asking whether some responsible joint body had made a computation of the comparative cost of carrying out the atomic-air offensive by land-based or carrier-based aircraft. Both Secretaries stated to the Herald that no such study had been made and that none was contemplated; one thought such a study should be made, the other not.

Year after year the Appropriations Committees of the two Houses of Congress spend long hearings in line-by-line scrutiny of the budgets of the three military departments. The usual result is a reduction of about three per cent—say one billion dollars out of a requested 35 billion. The Committee challenges a research project here or a number of military police there, postpones a construction project until a later year, and such like. This process calls upon the committee to sit in review upon the detailed work of the Assistant Secretary of Defense (Comptroller) and the Director of the Bureau of the Budget, each of whom with a thoroughly experienced staff has already gone over the budget with a fine-tooth comb to eliminate any possibility of wastage of this type. The search for economy in military outlays is one in which every taxpayer has an interest, and the Appropriations Committees a responsibility. But it is difficult to understand why these committees—and especially such advocates of economy as Senator Byrd and Representatives Taber and Reed—should focus their attention upon such low-yield items as military policemen while the duplication recounted by Mr. Finletter is taking place year after year at a cost to the nation in billions of dollars which could make the difference between budget deficit and surplus, between continued high taxes and tax reduction.

Second, Mr. Finletter says that just once since V-J Day have the Joint Chiefs of Staff ever been allowed to express their uninhibited views as to the needs of this country for its own defense. That one occasion was in 1951. Every other time, he says, the Chiefs of Staff have been told in substance that their job was to divide a pot of money or a pool of manpower that had been fixed by others, usually economic and fiscal authorities (pp. 261-63, 270). Now this, if true, is a most unusual way to run a railroad. You have military advisors who are the top professionals in their services and you tell them not to give military advice because it might turn out to cost too much. Furthermore, it has been stated, though not by Mr. Finletter in this book, that it is a common practice for pressure to be brought upon the members of the Joint Chiefs of Staff to go before the Congress and testify that they have not been restricted by manpower or money ceilings and that the forces provided are adequate in their unfettered military judgment.

Third, Mr. Finletter says that, even in the matter of dividing the pot of money or pool of manpower, the division is not made on the basis of first-things-first, second-things-second, and third-things-out-the-window. Instead there is a division-by-services which tends to produce approximately equal distributions of men and money between Army, Navy/Marines and Air Force. Even when the Joint Chiefs of Staff agree upon an allocation of money and men on the basis of national priority rather than service equality, Mr. Finletter declares that administrative action is likely to nullify the agreement. As above stated, the one occasion when the Joint Chiefs of Staff were permitted to state the real national need in forces was 1951. This was reflected in the defense budget for Fiscal Year 1953 by an allocation of \$20.5 billion to the Air Force. In the budget for Fiscal Year 1954, prepared by the outgoing Truman administration, the Air Force was reduced to \$16.7 billion—a reduction which Mr. Finletter vigorously protested; but even this amount was larger than the funds allocated to the Army and the Navy/Marines. The Eisenhower Administration found as Item 1 on its agenda this budget. Here is Mr. Finletter's description of what took place:

“The review in the spring of 1953 of the fiscal year 1954 budget which had been prepared by the Truman Administration was made by the civilian officials of the Department of Defense, as it should have been. . . . But if the Secretary of Defense is to make this recommendation he should make it only . . . after hearing, exhaustively, the military case from the civilian and uniformed heads of the three Services.

“The review of the fiscal year 1954 budget and of the force levels which this budget was calculated to support was not made in this way. . . . An arbitrary cut-back in the dollars allocated to each of the Services was made in such amounts as to restore the roughly equal division of the Defense dollar among the three Services. Practically all of the cut came out of the Air Force which was reduced from the previous year's appropriation of \$20.5 billion to \$11.4 billion, rather than to \$16.7 billion as had been planned in the Truman budget. *And this was done without consulting the Joint Chiefs or any qualified military men*, purely on the recommendations of the budget officials of the Department of Defense and economic experts in other parts of the Government” (pp. 269-70). (Italics supplied.)

Mr. Finletter's book has now been before the public for more than six months, yet none of his statements and charges have been denied or refuted. The statute of limitations is just about running out on the possibility of serious challenge. The defendant must be considered guilty as charged—and the defendant is the *system*, as applied by Republicans and Democrats alike, as applied to the Army, the Navy and the Air Force, and as applied *against* the national security.

I have selected from Mr. Finletter's book only a few of his astute analytical comments on our defense organism—the tendency to make many little decisions and avoid the big ones, to sweep under the rug facts that might be unpalatable to a segment of the military establishment and lead to an "interservice squabble," to determine the overall size of the military establishment on fiscal and economic grounds and then leave to the military experts only the problem of dividing a predetermined total, and to encourage the three military Services to divide men and money equally among themselves. There are others, but the ones here recounted are so serious as to demand correctives by administrator, legislator and citizen.

This is a courageous book. It is not inconceivable, to put it mildly, that there will be another Democratic administration during the years of Mr. Finletter's vigorous maturity. If this happens, he is obviously a man to be considered for very high position in the areas of foreign and defense policy. In this book he has rarely named a name, though it must have been a bitter deprivation not to do so. Yet those who follow these things know well whom he is talking about, and these latter will have no difficulty in identifying themselves. Will they gang up on him when the time comes? Will he be "too controversial" or "an air power extremist" or "a trouble maker"? Perhaps—and perhaps not. When this type of question arises it is pleasant to reflect upon the career of a man who could be ordered to obey every command except "shush"—Arthur W. Radford. Admiral Radford led the "Revolt of the Admirals" in 1949 in which he opposed the policies of the President and the Joint Chiefs of Staff and spoke out in open sessions of the House Armed Services Committee over the direct disapproval of the Secretary of the Navy. He is now Chairman of the Joint Chiefs of Staff, the highest military position in the land. This is a most encouraging sequence of events. Perhaps we really do mean what we say in the Constitution about freedom of expression to the public and the propriety of placing before Congress all information and opinions that can help them in performing their function under our system of constitutional separation of powers.

W. Barton Leach †

A WAR DEPARTMENT SECRETARY'S REVIEW

Mr. Finletter's book is a thoughtful and provocative consideration of United States military power in this atomic age. It is lucid and well written and comes from a man who, through distinguished service in such capacities as Secretary of Air, has gained an expert and inside opinion on

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the important matters about which he writes. Though some of his central conclusions are extreme—and I disagree sharply with them—the process by which he arrives at them should be employed in reaching better balanced positions. The controversy his conclusions may provoke will itself contribute to the solution of the all-serious problems of the size and composition of our armed forces. Mr. Finletter has made in lawyer-like and logical fashion *his* determination of these problems based on our foreign policy and the strategic concepts he adopts.

This is a “big” air-force book, but more than that, it is a plea for a vastly superior atomic air force—superior to what we have now and to that which the Russians may possess. No one can seriously quarrel with this assessment of the top priority for our armed forces, nor with the importance he gives in next order of priority to defense against atomic attack and to our relatively limited ground force commitment to NATO. My disagreement is one of degree, because when you cut the finite pie of our defense expenditures in the author’s fashion, you have much too little left for non-atomic navy or ground forces.

This, Mr. Finletter argues, fits our present and prospective situation. It is his fundamental thesis that any general war will involve use of nuclear weapons and that unless our preparations contribute to atomic war, we should not spend much money on them. War is to be decided within days, perhaps hours, after it starts. Mr. Finletter also argues that partly because of the public distaste for Korea (a local war), we will not engage in local or limited wars where, no doubt, conventional weapons alone would be employed.

I am not willing to cast aside the possibility, as is Mr. Finletter, that we could be involved in a general war in which neither side employed its nuclear arms. The recent revelations of the radio-active-fall-out effects of the hydrogen bomb show the world suicide probabilities of a nuclear war. In spite of all the atom-bomb shaking of much of our diplomacy and of virtually all that of the Soviets, there is a vast difference between words before the fact and the act of triggering a world holocaust. And certainly our *planning* must include conventional general war as a real possibility. Thus I cannot agree with Mr. Finletter that we should give up expensive General Purpose Forces until we have completely satisfied the more vital atomic priorities; or that we should now treat as a myth that conventional industrial preparedness wins wars.

The author states, “Nor should our military planners list as part of the US force-in-being US military units for local wars. We have announced our national policy not to get into any more local wars” (p. 240). This book was published late last fall. Would the present Formosan crisis—the defense of the island, the evacuation of Tachens, the touchy situation of Quemoy and Matsu—suggest that we need not plan on the possibility of local wars? The pattern of Russian aggression in the past suggests that for years we may have to meet such threats to peace in all parts of the globe with conventional military forces. This means adequate provi-

sion for General Purpose Forces including many foot sloggers whom the author would substantially supplant by air men carrying atomic weapons.

Recommended highly are the author's discussion of the shocking waste involved in having both the Navy and Air Force in competing atomic air roles, of the unscientific nature of military-force-level decisions and of the defects in the organization of the Department of Defense.

Howard C. Petersen †

JUSTICE WILLIAM JOHNSON. By Donald G. Morgan. Columbia: University of South Carolina Press, 1954. Pp. xv, 326. \$6.50.

Despite some excellent recent work on Johnson, some of which appeared in the pages of this Review,¹ I had not before reading this volume been a devotee in the small but intense Johnson cult. It had seemed to me a little that Johnson was a flighty, crotchety, garrulous man who was being "discovered" largely because historians like triumvirates, and Marshall and Story seemed not quite enough ornament for the Supreme Court for the first quarter of its history. But Donald Morgan's book goes a long way to making another convert; Johnson deserves the epithets, but he had courage and consequence, too.

William Johnson was born in South Carolina in 1771. His father was an ardent rebel, and the family suffered bitterly for its loyalty to the new Republic. After the war young Johnson studied at Princeton, and he learned his law in the office of Charles Cotesworth Pinckney. In 1794 he became a member of the state legislature and progressed to Speaker in three terms. In 1799, at the age of 27, he became a judge of the South Carolina Appeals Court and in 1804 Thomas Jefferson placed him on the Supreme Court of the United States. There he sat until his death in 1834.

The oft-told tragedy of the Jeffersonian presidents was their inability to pick Supreme Court justices who would stand hitched. Johnson and Story are the classic examples. For the more than twenty years remaining of his life, Jefferson thought of Marshall as his arch political enemy, the symbol of everything wrong with the constitutional system. Throughout those years, Johnson almost invariably stood with Marshall.

This is not to say that there was never any variance; Morgan tells how Jefferson stirred up Johnson to try to break the Marshall monopoly on the important opinions of the court, and Johnson did write more than

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1. Schroeder, *The Life and Judicial Work of Justice William Johnson, Jr.*, 95 U. OF PA. L. REV. 164, 344 (1946, 1947). See also Levin, *Mr. Justice William Johnson and the Unenviable Dilemma*, 42 MICH. L. REV. 803 (1944); Levin, *Mr. Justice William Johnson, Creative Dissenter*, 43 MICH. L. REV. 497 (1944).

half of the concurring opinions and more than half of the dissents penned by all Justices during his years on the bench. He thus did much to originate the practice of free dissent, now for better or for worse² a part of Supreme Court practice. But all the same, the total number of individual expressions was not large. Johnson concurred or dissented in 55 cases out of 977.

Yet Johnson's was a remarkable record for independence of thought even though the number of occasions of its exercise in the Supreme Court may have been, by modern standards, small. For Johnson was both a trial judge and a citizen of South Carolina during the same period that he was a Justice of the Supreme Court, and Morgan has beautifully developed the character of a man who was never more forceful than when he was on his home grounds. Sitting in Charleston he invalidated Jefferson's Embargo, and then topped off his defiance by engaging in a newspaper wrangle with Jefferson's Attorney General over the correctness of his opinion. Again, he took to the newspapers in 1822 to protest against the murderous tactics used by a special South Carolina court of inquiry examining into an abortive slave revolution that year. While the South Carolina slave trials undoubtedly denied due process, if slaves were entitled to any such luxury, they did reflect the dominant feeling of the community, and Johnson's personal standing suffered greatly in opposing them.

In these and other public controversies, Johnson's strength and his weaknesses were the complements of each other. His pugnacity and sheer courage took him into many a situation from which a more decorous judge might have preferred to remain removed, at the same time that his pettishness and egocentricity made the worst of them. Thus in a bicker with Thomas Cooper, president of the University of South Carolina, Johnson gratuitously attacked Cooper's free thinking religious attitude; and this from a judge who still thought himself a disciple of Thomas Jefferson! Johnson's independence of community pressures permitted him to invalidate a South Carolina statute prohibiting free Negro seamen, in effect, from entering the waters of the state. As dozens of South Carolina constitutionalists put pen to newsprint to attack the Justice, Johnson, in thinly veiled anonymity, wrote a dozen or more letters to the press to elaborate on his opinion and to denounce his detractors.

And so when the final crisis of his political and constitutional career came, Johnson was well used to going against the tide. When the nullification movement was gaining ground in South Carolina in the 1830's, the States Rights faction invited Johnson to give an address. They had chosen the wrong man, as he quickly revealed in very public correspondence. The tariff, proclaimed Johnson, was not merely constitutional, as he firmly declared it to be, but it was also a financial benefit to the State of South Carolina. Nullification, he declared, "is folly, . . . a silly and wicked delusion . . . it grows out of a deliberate conspiracy against the Union."

2. This reviewer would like to be recorded as of the "for worse" persuasion. Dissent, as it seems to me, should be reserved for serious questions, for much of the power of objection is dissipated when exercised on trivia.

To another dinner, Johnson offered his toast to "the holy temple of our Union."

On the Supreme Bench, Johnson contributed to the evolution of the Commerce Clause as a limitation on the states; and he did make some efforts to keep the contract clause within rational bounds, though he advocated almost limitless expansion of that same doctrine in *Fletcher v. Peck*³ by putting a purely natural law limitation on state powers. All this is detailed by Professor Morgan and leaves an impression of a man of intellectual substance—albeit one may still believe that Johnson's greatest contribution to constitutional history was that of not obstructing Marshall *much*.

Justice Johnson, this strong and cantankerous fellow, is beautifully portrayed by Professor Morgan. Morgan's extraordinarily thorough research adds much basic material to what he had known of his subject, and he describes the personality he has uncovered with a nice mixture of sympathy and objectivity. His book is readable, his accomplishment very great.

John P. Frank †

3. 6 Cranch 87 (U.S. 1810).

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