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BOOKS NOTED

THE NIGHTMARE DECADE: THE LIFE AND TIMES OF SENATOR JOE MCCARTHY. By Fred J. Cook. New York: Random House. 1971. Pp. xi, 580. \$10.00. *The Nightmare Decade* is an account of the career of Senator Joseph R. McCarthy and of the times during which he was a pervasive force in American politics. It is directed at those who have grown up since his demise and, consequently, have only a vague idea of what he was all about. The author seeks to entertain with political drama while warning against the possibility of such an experience recurring.

The drama, however, dominates any greater relevance the book may have. The author's swiftly moving narrative follows McCarthy's career from the small Wisconsin farm where he was born; to the state court bench, where he developed a reputation for "quickie divorces;" to the South Pacific during the Second World War, after which he illegally used his status as a marine by campaigning in uniform back home; to the United States Senate with the Republican class of '46, where he rose to national prominence through abuse of the congressional investigation process and manipulation of the news media and then fell from power when he overestimated his influence; to its conclusion in a ward for eminent alcoholics at Bethesda Naval Hospital.

The man that emerges from this story is represented by the author as a two-dimensional incarnation of evil. The entire crusade against Communists in government is attributed to McCarthy's need for a campaign issue that would make the voters overlook his lackluster record. Once underway, it became a monster that thrived on his obsession with the public spotlight and political power. One can imagine him soliloquizing shortly before his sensational Wheeling speech in 1950:

Make the [nation] thank me,
Love me, and reward me
For making [it] egregiously an ass
And practicing upon [its] peace and quiet
Even to madness. . . .
Knavery's plain face is never seen
till used.
(Iago in *Othello*, Act II, Scene 1)

The fantasy, however, should not be carried too far. It is the author's presentation of documented fact that enhances the drama.

The author, Fred J. Cook, does not attempt to conceal his negative feelings about either the man or the era. He lived through the McCarthy era as a reporter for the New York World Telegram and came under attack himself for an article he wrote on the Alger Hiss case. At times it appears as though his bias prevents objective appraisal of either personalities or events. It would be difficult, however, for even an objective reporter to find too much good to say about the man or his "accomplishments." Among these "accomplishments" was the destruction of the lives and careers of many innocent persons. McCarthy is also credited with aiding and abetting the foreign policy decisions that have resulted in the current situation in the Far East. Those with the foresight to dissuade the making of such decisions were silenced or forced out of Government by the purges he inspired. Mr. Cook succeeds not only in entertaining, but in impressing his warning against dogmatic extremists and the danger to American society they represent.

THE JUSTIFICATION OF THE LAW. By Clarence Morris. Philadelphia: The University of Pennsylvania Press. 1971. Pp. 214. \$12.50. The achievement of justice through law has long been the subject of legal philosophy. From Plato to Pound the duty of the governors to the governed has been defined and debated. Now, in an interesting book, Clarence Morris has enunciated a novel theory of justice. In its simplest form, his theory is this: the more the law implements the public's genuine and important aspirations — not its desires for individual gratification but the social, deep-seated, unselfish, nonexploitative aspirations — the more just the legal system becomes. Since man's capacity for justice does not flow from divine reason or divine revelation, Professor Morris believes that men may enjoy justice steadily and by design only when they live in a society that affords opportunities to all its inhabitants to develop their capacity to form aspirations for their society.

Professor Morris, currently Professor of Law at the University of Pennsylvania, traces his interest in legal philosophy in his introductory acknowledgments from John Dewey's seminar at Columbia in 1926 to Roscoe Pound's at Harvard in 1931 and finally to his association with Derk Bodde with whom he has studied and written in the field of Chinese legal thought. Professor Morris has been a Fellow of the Harvard Law School, a Fellow of the Center for Advanced Study in the Behavioral Sciences, and a Fulbright Fellow, as well as Senior Research Professor at Cambridge University where the book was completed. The author has published several distinguished legal works including *Law in Imperial China* (with Derk Bodde) and his edition of *The Great Legal Philosophers: Selected Readings in Jurisprudence*.

Differing with respect to implementation from Rousseau's theory of rectitude of the general will under which all governmental action was unjust unless it conformed to the general will, Professor Morris advocates the delegation of the task of identifying the public's aspirations to public servants and to some extent, nongovernmental elites. The author feels that this method of implementation is the only practicable one since Rousseau's procedure for discerning the general will at assemblies where the populace discusses and adopts rules for its governance is not feasible for formulating the policies of complicated, industrialized societies. Professor Morris' theory of equating justice to the public's aspirations contains an important exigency: justice can be realized only when there exists a public capable of aspiring. Thus up to now the world's capacity for justice so defined has been small. There are those who believe that the Western world is still too oppressed to formulate such unfettered aspirations, and that true justice will emerge only after its liberation. Herbert Marcuse calls for liberation through revolution, John Stuart Mill, relying on man's reason, urged peaceful nonconformity. According to Professor Morris both are wrong but not dysfunctional for we may learn from Marcuse that every aspiration has an emotional dimension, and in rejecting Mill we should be dissuaded from the belief that justice is only a matter of factual discovery. The fluidity of Professor Morris' definition of justice is demonstrated in his assertion that the justice of one time or place can become the clumsy legalistics of another. This is particularly true if those whose duty it is to discover the public's aspirations fail to recognize that they are out of touch with the public they seek to represent and hence impose their own idiosyncrasies while under the delusion that these are the public's aspirations.

In the light of this theory of justice the author examines the complex

logic with which the law must tread its way through the maze of human existence; the need for general rules such as enacted law and judicial precedents; the function of sociological insights in the development of common law; and the role of statutory penal law, strikingly illustrated from the Chinese Imperial code.

Professor Morris ultimately turns to justice toward nature. He points out that when Western man abandoned the conceit that nature has legal duties and thereby ceased such activities as prosecuting abnormal roosters for laying eggs, man also became convinced that nature had no legal rights. As a result man has felt free to ravage nature for his own personal gain — until he has become aware that by destroying nature he is destroying himself. What is needed now, argues Professor Morris, is a legal presumption in favor of the natural status quo, similar to the presumption of innocence in favor of accused persons. The result of this would be that nature would no longer be dislocated on whim or without forethought about the harm that might ensue; he who proposes dislocation must justify it before he starts. This presumption would be intended not only to preserve the natural, but to prevent man from making his own world uninhabitable.

Professor Morris' book is a very timely contribution. In this era of heated discussion over the redirection of national priorities, he provides viable principles upon which reform may be structured. Those seeking to identify the nation's goals as well as those involved in their implementation may profit from his work.