
Three and a half years after the United States dropped an atomic bomb on Hiroshima the world has still not advanced beyond the threshold of the atomic era. The chasm separating the United States from the Soviet Union may be measured by the complete failure of the two countries to agree within the framework of the United Nations on a mutually acceptable plan for the international control of atomic energy. Our own difficulties are magnified by the necessity of making an adjustment on the domestic national level between regulation of atomic energy and the fundamental political and social tenets of our society.

While much thought must be devoted to both the international and national problems, American attention for the most part has neglected the domestic one. For this reason the published work of two lawyers, James R. Newman and Byron S. Miller, should be welcomed. The Control of Atomic Energy attempts to do two things: to explain in great detail the provisions and ramifications of the 1946 Atomic Energy Act, and, on a broader scale, to point out certain conclusions as to the significance of the Act for the American way of life. To a certain extent, perhaps, the devotion to the first purpose makes more difficult the attainment of the second. Yet the degree of success reached on both levels makes The Control of Atomic Energy required reading for all serious students of the twentieth-century United States.

A non-lawyer reviewing The Control of Atomic Energy cannot and should not attempt to judge the elaborate exposition of the Act's terms as set forth by Newman and Miller. Starting with the organization and structure of the Commission, the authors examine under logical headings the nature, extent, and implications of the legislation. They point out initially the three degrees of governmental regulation in the field of atomic energy: the area of monopoly, the area of restriction and direct control, and the peripheral area of indirect control. For each area the undefined, shadowy realm of indistinct responsibility is subjected to revealing examination. The greatest skill and linguistic dexterity of the authors is necessary to guide the reader through the legal maze created by the Act, a maze made all the more confusing by the fact that the Congress was working without complete scientific information, attempting to chart a course for the nation on a sea whose limits they could not begin to discern. Under such circumstances, as the authors demonstrate, the wonder is not that the Act's language is loose and imprecise in some instances, nor that undesirable interpretations may be put upon some sections, but that the Congress did succeed to such a degree in writing a law of fundamental strength and integrity.

The detailed exposition of the terms and significance of the Atomic Energy Act should make the work of Newman and Miller an indispensable reference for scientists working in the field, for lawyers seeking to give advice on the subject, for governmental experts confronted with some of its manifold problems. Charts have been provided defining the area and extent of governmental control; the extent of the Commission's supervision over industrial and commercial uses of atomic energy has been fully explored. Helpful appendices include basic information on the subject and initial regulations of the Commission, as well as a collection of terms of the Act affecting specific matters. The authors also concern themselves with the effect of the Act on the present system of patents and the problems raised in connection with private rights to discoveries in this field. For the scientist the book not only lays bare the difficulties of research and exchange of information, but also points to many partially hidden traps for the unwary. The severe penalties for a mistake put a high premium on the analysis made by the authors in these sections.
As mentioned above, the reviewer cannot hope critically to evaluate the job which the authors have done in the detailed, technical exposition of the provisions of the Act. He can only indicate that the approach is schematic, which aids the reader greatly; the language is clear and precise, even to the layman; the ramifications of the Act’s clauses are, it would seem, fully explored. The only handicap—one mentioned in the Preface and to be commented on again below—is that the manuscript was completed early in 1947, while the book itself did not appear until 1948, and this review is being written almost another year later. Time and atomic energy wait for no man; a revision to include the work of the Atomic Energy Commission in its first years would be in order and extremely worth while.

The implications of the Atomic Energy Act for a free-enterprise economy such as our own have not been lost on the authors. They are writing no less than simple truth when they state very early in the book that “the Atomic Energy Act is a radical piece of legislation.... It is, in sober fact, an act without precedent in the legislative history of this or any country.”

In a great and inevitably broadening area the traditions of American experience have had to give way before the hard facts attendant upon the release of nuclear energy. This conflict, it would seem, is explicit in the issues of government control versus private enterprise, and national security versus individual freedom of expression. Both clashes have inexorably been resolved in favor of the former and at the expense of traditional concepts still held dear in this country.

The clash between government control and private enterprise is apparent at the very outset in the nature of the Atomic Energy Commission. “The scope of the Commission’s powers and duties, the dimensions of its opportunities, exceed those of any department of the government ever before established.” Through the Commission the government makes itself felt at almost every point of atomic energy development. Because of the uncertain nature of future progress in atomic energy, the Congress felt it necessary to leave much discretionary power in the hands of the Commission. Thus is foreshadowed a growing, rather than diminishing, field of government control through the Commission’s interpretation of its powers. The United States Government owns atomic energy plants, owns fissionable material, controls traffic in fissionable material through license, conducts elementary research, directs research through its licensing power, and so on.

In both its patent and licensing provisions the Act “is at variance with the accepted dogma of our economic system that the progress of the industrial arts can be assured only by the profit motive, and that, unless the benefits of new discoveries are made to inure to the profit of the discoverer, they will not be made at all. . . . [These provisions rest] in part on the assumption that progress can be best made and society best served under a system that assures the pooling of knowledge and permits no one to achieve a privileged position by virtue of the exclusive right to use certain processes or techniques. The testing of this thesis in application will have more than academic interest.”

The last sentence of this quotation must set some kind of record for understatement. As the revolution brought about by the release of atomic energy makes itself felt, as it inevitably shall, in the everyday lives of American citizens, so will be revealed an expanding area of government interest and control in an economy still attempting to operate on the basis of private ownership and the profit motive.

What is holding back the course of the atomic revolution is, of course, the bleak international situation. In this still unpeaceful world the United States has felt it necessary to emphasize the military as opposed to the civilian aspects of atomic energy. The exigencies of national security as they are understood in Washington have inevitably had an adverse effect on the ideal of individual freedom of expression, and this fact is, to a

---

1 P. 3.  
2 P. 27.  
3 P. 132.
certain extent, made clear by Messrs. Newman and Miller. I say to a certain extent, because in this phase of the subject time has not dealt gently with the authors. Thus they discuss at some length the struggle over the relation between the armed services and the Commission. The matter is of continuing significance. Yet while the desires of Congress for civilian dominance of the Commission are reflected in the Act, this Commission has been obliged to devote perhaps as much attention to the development of atomic weapons as a commission solely military in character. Realization of this fact is all-important to an understanding both of the domestic operation of the Act and of its international implications. Publication procedures, however, apparently forced the authors to bury this revealing development in three scattered footnotes. “For good or ill the Commission’s production planning is currently simplified by its announced policy of devoting almost its entire resources to the manufacture of atomic weapons.” Like the two other footnotes, the one here quoted deserves much greater prominence, much fuller treatment; the hurrying reader will miss it altogether.

In the section dealing with control of information the authors make clear Congress’s “obsession with the safeguarding of secrets,” an obsession which leads to the enactment of truly “draconic” penalties for violations of the Act. The reviewer also finds himself in hearty accord with the authors that “the greatest danger by far in the matter of exchanges between scientists lies in a policy of unreasonable and unreasoned secrecy, a policy that may end by defeating the very purpose it was expected to serve—the maintenance of American leadership in the field of atomic energy.” Such arguments, however, may at this time be interesting but academic. Only an abrupt and unforeseen change in Russian policy will make practicable any fundamental revision in American preoccupation with matters of national security.

Since The Control of Atomic Energy was written, the question of the future course of Russian-American relations has loomed so large that its effect has inevitably been felt, not only on the course of discussions concerning the international control of atomic energy, but also on the operation of the American act as well. There is abundant room and great need for further study of this effect. Mr. Newman and Mr. Miller, who have seen so clearly into the implications of the atomic revolution, are most competent to undertake the task.

Department of Politics, Princeton University.

Edgar S. Furniss, Jr.


The duel between the New York, New Haven & Hartford Railroad and Louis D. Brandeis is a dramatic chapter in the history of the corporation and the career of the later associate justice. It has the appeal of personal conflict: in this corner, Charles S. Mellen, the president of the monopoly, and J. Pierpont Morgan, his trainer; in that, Louis D. Brandeis, the young challenger, a disinterested crusader for the people. It has the advantage of compactness. Here is no long survey of historical development. Instead we have only the last act. At the outset the New Haven was a powerful, sacrosanct New England institution, paying 8 per cent dividends to, among others, widows, orphans, and trust estates. Seized by a delirium for consolidation, the railroad now proceeded to acquire coastal steamship lines and the trolley systems of southern New England. Finally, in 1907, it bought a large stock interest in the Boston & Maine, the major system of northern New England, and controlled that railroad by various devices for nearly seven

4 P. 63n. 5 P. 223. 6 P. 204.