REVIEWS

GRAND INQUEST—THE STORY OF CONGRESSIONAL INVESTIGATIONS. By Telford Taylor. New York: Simon and Schuster, 1955. Pp. xviii, 358. $4.50.

MR. Taylor has written more than the "story" of congressional investigations; his book is the best analysis yet published, for lawyers as well as for laymen, of the uses and abuses of congressional inquiries viewed in their historical, political, and legal context. With frequent references to British practice and with copious legal citation, he discusses the problems that beset us: the power, privileges, and procedures of legislative committees, their 162-year-old insistence upon unlimited access to executive papers, their "illusion of legislative omnipotence," their self-transformation into legislative courts bent on "exposure" and ostracism, invocation by witnesses before them of the privilege against self-accusation, and current proposals to curb their worst abuses by enacting "codes of fair procedure."

The chief contribution of *Grand Inquest* is its dissection of the modern loyalty-subversion investigation. Since the earliest days of the Republic, congressional investigations have been used to ferret out corruption on the part of the Executive, or civil or military incompetence, and as far back as 1827, when Congress launched an inquiry into the need for a tariff, we have witnessed broad inquiries into social problems, the most recent being the Fulbright "study" of the stock market. But it was not until 1938, when Martin Dies realized the unparallelled opportunities for personal and political aggrandizement in public accusations of Communist affiliation, that the subversion investigation came into its own.

This new type of inquiry, which has flourished for seventeen years, is completely unlike its predecessors. These inquiries are not, as Mr. Taylor points out, ancillary to a legislative purpose. They are ends in themselves. They are not investigations of the menace of domestic Communism and how we can best cope with that menace. They are rather what Walter Lippman has described as "instruments of political warfare" designed "not only to investigate but to put on trial and to punish." Occasionally a pretence will be made that a governmental function is under inquiry—as when Senator McCarthy quizzed James Wechsler on the theory that he was seeking to determine why the State Department has placed his books in its overseas library. But more often, no excuse is even advanced for investigations of the political affiliations and beliefs of persons wholly unconnected with any federal office or function—witness Senator Jenner's investigation of "subversive" teachers in private and public schools. These "exposures" are justified on the ground that their targets are Communists and that therefore a legislative committee may hold them up to public scorn, put pressure on their employers to discharge them, and in-

duce the community to ostracize them. The result is the creation of governmental machinery outside the law for the sole purpose of inflicting punishment.

Mr. Taylor might have pointed out that the House Committee on Un-American Activities has even developed a method for exposure on a mass production basis. Without going to the trouble of holding hearings, calling witnesses or issuing reports, the Committee has prepared dossiers on more than a million Americans containing "derogatory information," *i.e.*, records of connections of the individuals with organizations that the Committee without notice or hearing has found to be Communist fronts. Summaries of these dossiers are widely circulated, often without the knowledge of the individual subject of the file.

Mr. Taylor mockingly suggests that instead of our congressional committees laboriously questioning witnesses, the Census Bureau, in the interests of economy, should require *everyone* to state under oath whether he is now or ever was a Communist. But this proposal is as sensible as many others that have been advanced seriously by Congress, and Mr. Taylor may yet rue the day he advanced it.

Where have the courts been while these congressional committees were running riot? They have been "reluctant to interfere with legislative prerogative," but as Mr. Taylor bluntly warns them, "If the courts shut their eyes to this peril, they may never again be opened at all."[1] Perhaps they are now beginning to open. In *United States* v. *Rumely*,[2] the Supreme Court refused to sanction a congressional inquiry about the customers of a right-wing publisher, and the Court has recently heard argument based on a claim of violation of the first amendent in the course of a congressional investigation.[3] But the courts can only be relied upon to protect a witness who refuses to answer a question because it is not pertinent to an authorized inquiry; as the *Rumely* case indicates they are not likely to invalidate an inquiry on the ground that it is beyond congressional powers, *i.e.*, unconstitutional.

What then can be done to prevent inquisitorial surveillance of private citizens? Mr. Taylor is skeptical about the value of "codes of fair procedure" and indeed opposes current proposals to give persons under investigation the right to call witnesses in their own behalf or to cross-examine hostile witnesses. Such procedure would, he believes, convert legislative committees into legislative courts and "undermine the investigative process itself."[4] Instead he suggests a far more drastic reform: he would forbid legislative committees to usurp the function of the executive or the judiciary and "confine them to their proper function."[5] This, he believes, can only be accomplished by "political" means. When a public morality is created which frowns upon abuses, they will stop. Meanwhile he suggests two immediate reforms. He urges the repeal

1. P. xvii.
2. 345 U.S. 41 (1953).
3. Emspak v. United States, 203 F.2d 54 (D.C. Cir. 1952), *cert. granted*, 346 U.S. 809 (1953), *reargument*, 23 U.S.L. WEEK 3245, 3250 (U.S. April 4, 5, 1955) (No. 9).
4. P. 255.
5. P. 257.

of the provision of the Legislative Reorganization Act of 1946 which gives the fifteen standing committees of the Senate blanket authority to issue subpoenas.[6] Thus he would compel them to get the permission of the entire Senate for any contemplated investigation. Second, he would repeal the statute which makes it a misdemeanor to refuse to answer a "pertinent" question put by a congressional committee.[7] In its place, he would enact a federal counterpart of section 406 of the New York Civil Practice Act enabling congressional committees to invoke the contempt powers of the federal courts to compel obedience to congressional subpoena. Witnesses would then be able to obtain a speedy and summary review of any challenged committee question, inquiry or procedure.

Mr. Taylor's first suggestion, in this reviewer's opinion, places no great obstacles in the way of congressional demagogues. We have had shockingly unfair congressional investigations specifically authorized by the Senate or the House both before and after the adoption of the Legislative Reorganization Act. And under that act, Senate committees are compelled to obtain Senate approval of a legislative appropriation to finance an investigation.

While his second suggestion is likely to place a witness in a more advantageous position when confronted by what he believes are illegal or unconstitutional questions or procedures, our courts have been extremely reluctant to challenge a committee's notion of what is relevant. In modern times, on only two occasions have the federal courts held that a question was not pertinent [8] or that a committee was conducting an unauthorized inquiry.[9] Moreover, Congress has already unmistakably indicated that it desires this power to hale recalcitrant witnesses before federal judges as a complement to and not a substitute for the existing remedy of criminal prosecution.[10]

Nor need a code of fair procedures, as Mr. Taylor fears, strait-jacket an investigating committee. Such a code could incorporate Mr. Taylor's two immediate suggestions and a score of others that would induce majority rule and fair play in congressional investigations, including perhaps the most significant suggestion of all, namely, that a special committee be set up in each house to receive and investigate complaints of violation of the code and to recommend disciplinary action against offending congressmen or committees.[11] Such a code would not confer upon a witness or a person under investigation all the

6. 60 STAT. 831 (1946).

7. 52 STAT. 942 (1938), 2 U.S.C. § 192 (1952).

8. Bowers v. United States, 202 F.2d 447 (D.C. Cir. 1953).

9. United States v. Rumely, 345 U.S. 41 (1953). For an indication of a court's notion of the almost limitless bounds of relevancy, see United States v. Bryan, 72 F. Supp. 58 (D.D.C. 1947).

10. The Keating Bill, H.R. 4975, 83d Cong., 2d Sess. (1954), which passed the House on August 3, 1954, gave this new power to congressional committees. A similar bill was reported favorably on March 3, 1955. *Report on H.R. 780*, H.R. REP. No. 87, 84th Cong., 1st Sess. (1955).

11. See Maslow, *Fair Procedure in Congressional Investigations: A Proposed Code*, 54 COLUM. L. REV. 839 (1954).

rights of an accused in a criminal case or even those of a respondent in an administrative proceeding. But it can insure against one-man investigating committees, require the screening of defamatory matter in executive session before it is publicized, and provide for a limited right of reply and even for a brief cross-examination of the accusing witness.

We are thus left with Mr. Taylor's "political" solution and his conclusion that unless "the temper of the country" is changed, little can be accomplished by statute. Of course this is a political problem and the censure of Senator McCarthy (regardless of the text of the censure resolution) has done more to warn those who might desire to follow in his footsteps than a score of statutes or court decisions. But the temper of the country can also be affected by agitation for a code of fair procedures. No less important in the creation of that public morality are works as perceptive and searching as *Grand Inquest.*

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THE LEGAL COMMUNITY OF MANKIND. By Walter Schiffer. New York: Columbia University Press, 1954. Pp. x, 367. $5.50.

"[T]HE more one reads of man's notions about the meaning and method of civil society, the more often is one inclined in despair to say that truth has as little to do with politics as it has with most politicians . . . . If ideas in politics more than elsewhere are the children of practical needs, none the less it is true, that the actual world is the result of men's thoughts. The existing arrangement of political forces is dependent at least as much upon ideas, as it is upon men's perception of their interests."[1] This in a nutshell is the problem with which the late Walter Schiffer deals in his study *The Legal Community of Mankind.* He attempts "to describe and explain the growth of the pattern of thought on which this idea of a universal organization [the League of Nations] was based, and demonstrate to what extent this idea was contradictory in itself."[2] In his endeavor the author traces the evolution of the concept of universal organization, from the breakdown of medieval Christian unity through the drafting of the League of Nations Covenant, by expounding the ideas and doctrines of political thinkers beginning with Grotius, Pufendorf, Wolff, and Kant up to the positivist and progressive schools of the nineteenth and twentieth centuries. Mr. Schiffer's scholarly and comprehensive work is bound to have a notable impact on present thinking on the nature, function, and potentiality of a world organization.

The excellence and importance of this study, with its high scholarship and impressive erudition, require one to examine carefully Mr. Schiffer's presup-

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1. FIGGIS, STUDIES OF POLITICAL THOUGHT FROM GERSON TO GROTIUS 1414-1625, at 1 (1923).

2. P. 278.