

LAW AND THE LAWYERS. By Edward S. Robinson. The Macmillan Co. 1935. pp. xi, 323.

IN the hospitable environment of Yale Law School a distinguished academic psychologist has grappled with problems, colleagues and students until his verbal sequences about law and psychology have arranged themselves in plausible and ingratiating order. The result, fixed in print, is now thrown to the barbarians beyond the gates.

Professor Robinson contends on behalf of a naturalistic (realistic) jurisprudence, predicts certain advantageous consequences to follow from it, and discusses the ways and means by which psychology can contribute to it.

He calls for an account of legal philosophies "in the same objective spirit as that in which we describe the myths of primitive peoples." In the same spirit he proposes to study the opinions of judges, the behavior of counsel and witness, the newspaper reading public, the litigants and the legislators.

From this naturalistic program certain results, conceived to be advantages, are predicted to follow. Judges will make "plain admission of actual policy" (p. 321). "If judges have evolved techniques of avoiding the principle of *stare decisis*, let those techniques be spread as frankly upon the law books as are the principles themselves" (p. 320). "A naturalistic philosophy of law will help men to accept some valid facts about legal behavior and the legal institutions to which they are inclined to close their eyes" (p. 320).

Psychology is invoked as a tool in the path to naturalism. The jurist is told to be of good cheer despite the winds of contrary doctrine in the cave of psychology because "there has existed an attitude of inquiry (in psychology) able to survive its own mistakes" (p. 99). The jurist is counselled to "throw himself into psychology completely enough to become his own competent critic on matters of psychological theory" (p. 111).

The psychologically equipped person will want to investigate the "factual importance" of certain distinctions whose significance has been greatly stressed in the past controversies of legal philosophy. He will compare the objective consequences of "codes" or "cases," of appeals to "natural law," and of "fictions" and "legalisms."

He will also seek to disentangle the "felt difficulty and the problem as formally defined" in the decision (p. 197). In the course of a suggestive discussion, Professor Robinson names certain criteria for the discovery of occasions when this discrepancy is great. One indication is the resort to "statements more relevant to a general issue of fairness than to the judicial definition of the case" (p. 197). Another is the case in which the defendant has exceptional notoriety. There is also the "queer decision". And "When the court speaks of a question of breach of contract as reducible to the issue of intent of the parties, we may be fairly sure that something other than intent is involved" (pp 197ff.).

Throughout the book the style is swift, simple and quotable. Thus, "A doctrine like pragmatism makes it possible for judges to glory a bit in their violation of precedent and renders it less necessary for them to dress every legal innovation in the costume of an old settler" (p. 281).

Plainly Professor Robinson has produced an excellent treatment of a timely theme. Without pausing to develop the constructive side of his work any further, it may not be amiss to enter certain reservations upon the enterprise as a whole.

(1) Skill in naturalistic analysis does not necessarily lead to the consequences foreseen, and preferred, by Professor Robinson. A naturalistically equipped élite will not necessarily use candor in talking to anybody but itself. A full and free confession of intent to all the world is no necessary outcome of insight. Professor Robinson would like to have new knowledge used for "social adjustment", which he undertakes

to define. Few Americans will prefer anything else, in general; but there is abundant reason for predicting that more knowledge does not invariably generate goodness, if goodness is to blunt the cutting edge of social conflict. The use to be made of knowledge depends upon the system of preferences about élite relationships which may be adopted by particular jurists and juristic schools in varying contexts of power relationships.

(2) Although psychology has no monopoly of naturalism, the *relative* contribution of psychology is not examined. Professor Robinson does not clearly distinguish between "psychologists" and other social scientists who share the naturalistic approach; hence there is no sharp comparison of the relative efficiency of "psychology" as a contributor to naturalistic jurisprudence. The frame of reference of the term "psychology" is left free and floating, like an expansible and contractible balloon, and words like "anthropology", "political science", "economics" and "sociology" are left in the vague.

(3) The technical creativeness of psychology is under-emphasized by the specific mode of presentation adopted by Professor Robinson. By emphasizing words of general reference, like "compensation", and by restricting attention to the language of legal philosophers and judges, the impression is left that psychology is just another word system. Now any vocabulary needs to be construed with reference to the characteristic focus of attention of the speaker, and "psychologists", as I understand the word, have invented several new ways of focussing attention upon events. Legal events can be observed by prolonged free association interviews, by life history interviews, by diary note observation, and by several related procedures which promise to enrich the data traditionally at hand for analysis. The language of "psychologists" often makes sense, and sense of importance for "naturalistic jurisprudence", when rigidly interpreted with reference to the observational standpoint of the psychologist in question. Professor Robinson is quite aware of all this, but this particular book suffers from a diffuseness of presentation which suggests that psychology simply contributes another argument to a field where Professor Robinson himself wants to contribute something more.

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CORPORATION LAW FOR OFFICERS AND DIRECTORS. William J. Grange. The Ronald Press Company. 1935. Pp. iii, 904.

THIS review has been written from the point of view of the business executive, and the guidance which he may expect to derive from the book; the reviewer is not competent to say with what *legal* accuracy or finality the rules of conduct for business managers are laid down. The review editor apparently has considered it not inappropriate that a book addressed to laymen should be reviewed by a layman.

The general structure and contents of the book may be summarized in simple fashion. Of approximately 900 pages, 675 are text, 200 pages are forms and model drafts, and 40 pages are indices. Among the 50 chapters the largest groups are seven chapters relating to by-laws, ten chapters relating to stock, six chapters dealing with the rights, liabilities and activities of stockholders, five chapters treating of directors and their doings, and four discuss the manner and conditions under which a company may be transformed or terminated in insolvency, bankruptcy, reorganization and dissolution. Other matters dealt with include dividends, management policies, officers and employees and their relations with the corporation, the corpora-

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