

St. John's Law Review

Volume 10
Number 1 *Volume 10, December 1935, Number*
1

Article 35

May 2014

Law and the Lawyers (Book Review)

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difficulties encountered by the child labor amendment. Any movement for constitutional change would only divert our energies from the immediate tasks for many years to come.

The students of our political system, it seems to me, should undertake the finding of a way whereby, under existing constitutional forms and in line with accepted judicial precedent, it would be possible to integrate national and state authority in the furtherance of a broad program of social control and reform. Little has as yet been done on this problem. I am satisfied that with thought and patience it can be solved.

Prof. Elliott's book may well prove to be the needed stimulus to the making of the effort. It is a challenge and a call to action.

HERMAN A. GRAY.

New York University School of Law.

LAW AND THE LAWYERS. By Edward Stevens Robinson. New York: The Macmillan Company, 1935, pp. xi, 348.

In Dean Pound's seminar on jurisprudence at the Harvard Law School, we used to talk a good deal about the utilization of the sciences in the development of a sound jurisprudence. My recollection is dimmed by the passing years, but I have the impression that we agreed that the most important was the science of economics. The thesis, however, of the present volume is that it is "a fundamental principle of the new philosophy of law to recognize that every important legal problem is at bottom a psychological problem and that every one of the many traditions about human nature which are to be found in legal learning needs to be gone over from the standpoint of modern psychological knowledge." This view, however, is not quite as remarkable in a book about law written by a psychologist as it would have been in a psychological analysis of the law written by a lawyer.

We think that the philosophy of the law ought to be descriptive in that it ought to tell how law is made. The practical man, quoted by the author, who wanted to know whether the author was talking "about how judges ought to think or * * * simply speculating about how they do think," had raised a very serious and important question which must be answered before the field of jurisprudence is definitely delimited. We are of opinion that jurisprudence must tell us how judges do think, how decisions are reached, how statutes are made and how administrative acts are determined. The possibilities are not infinite and can even be described within the short compass of a book review.

There are still among us the naive who believe that law consists of a fixed body of rules and principles upon which judges, legislators and administrative tribunals draw in making decisions. This is the philosophy of many laymen unequipped with a technical knowledge of the law. It is the philosophy which many law students in law schools share, and who do not hesitate to articulate their disappointment as the various courses of study unfold before them.

At the extreme other end are those who believe that there are no principles or rules of any kind in law but that all decisions are individual acts of men elevated to judicial office and while couched in authoritative terms, are, in the last analysis, decisions reflecting merely the temperament of the judge. Commentators on constitutional law are the most prolix exponents of this view—probably not without good cause.

Since the publication of Holmes' book on *The Common Law*, there has been a general realization that the progress of judicial decisions is dictated by a variety of forces, among which the personal psychology of the judge is only one. No one who is familiar with modern juristic literature, which has been reiterating Holmes for more than fifty years, can fail to realize that individual decisions are a composite of social, economic, political, philosophic and psychological forces. The ancient conflict between the necessity for certainty in the law, on the one hand, and flexibility to work individual justice on the other, is the background in which these forces operate. The question to be put to the psychologist is whether or not there can be found in his science any data, any information, any rules of conduct which will enable us to predict the effect of the psychological forces upon judicial decision.

I am one who has placed great hope on the probable value of the gift to jurisprudence by psychology, but I confess that this book has created a great feeling of futility in my mind.

To say that at bottom every judicial decision is a study in psychology seems to me to add nothing to the general store of learning. Every human act or judgment involves a mental process and all conduct is, in that sense, psychologically conditioned. A judge or a constable is first of all a human being and the way his mind works is a fit subject for psychological investigation. But unless psychology can show that the same mind, devoted to legal problems, develops certain habits and tendencies which are different from the way that mind would react to other problems, the quest will not be very helpful. Psychology itself, of course, does not yet seem to have developed any certain rules upon which great reliance can be placed. I have myself found most satisfaction in the revelations of the psychoanalysts. The technique which they have devised for describing men's minds and souls seems very helpful in ordering one's life and in making judgments about others. But the process of discovering the subconscious mind of a particular judge involves appalling difficulties. The very basis of the psychoanalytic approach includes a long and painstaking investigation into the private life of any person whose subconscious mind is to be uncovered. Obviously, this is an impossible task in the case of the judicial and administrative bodies from whose hands the law emanates, and if predictions with regard to the future of law or the possibility of a particular decision being for the plaintiff or the defendant, depend upon our familiarity with the subconscious mind of the judges, we are indeed at a complete loss.

There are, of course, in a society like our own, whose motivations are comparatively few, generalities which apply to most men's minds. This makes it possible for us to have business dealings with people because their motives are in the main the same and their traditions govern their conduct in attaining their ends. The study of current motives and psychological traditions from the social point of view may, of course, produce great results in enabling

lawyers to guide themselves in the everyday work which they have to do. With that problem, this volume is but little concerned and could hardly be expected to treat.

One of the chief difficulties involved in an adequate study of jurisprudence is foreshadowed in this book but not fully developed. We lack, I think, a clear philosophy of law, an agreement as to the ends which law is to achieve. Without that any study of jurisprudence is bound to be in the end haphazard. In the development of our social and economic life, law will indeed play its part but it will play this part unconsciously or as a tool of those who are in a position to wield it unless the end of law is clearly and definitely in the minds of the law-makers. This obviously involves some agreement as to the ends of social life in a modern, civilized community. But there is no agreement. Everybody wants the world to be a happier place to live in for all of us, with economic security assured and leisure for cultural development afforded to all, but the process by which this ideal is to be attained has divided the world into conflicting and irreconcilable groups. It is said that modern law is the instrument of one of these groups, and the problem arises because the non-assenting members of the community are seeking to explain that law is a force apart from this conflict. Those of us who think that this effort is futile can pin but little faith on the prospects of psychology as an effective vehicle in the development of current jurisprudence.

Having said all this, however, it is only fair to add that the scholarly work done by this author is an extremely valuable adjunct to the growing library of jurisprudence; that his explanations of modern psychological theory are always illuminating, thoroughly readable, and afford a great deal more than mere "professorial amusement." Many forthright problems are presented and much sound analysis and thought can be found in the pages of this book. It ought to be a primer for law school students. This is the type of literature which I think will become more common in the near future and which will attract the attention of juristic writers more and more as time goes on.

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MR. JUSTICE CARDOZO, A LIBERAL MIND IN ACTION. By Joseph P. Pollard. New York: The Yorktown Press, 1935, pp. xv, 327.

No jurist of recent years has proven himself more popular or fascinating, either because of the facility and grace of his pen, or the depths of his well ordered yet intriguing mind, than Justice Benjamin N. Cardozo. He who would and can penetrate the hidden recesses of this juristic mind with understanding and analysis should never want for interested and avid readers. It is to this pleasant yet exacting task of exploring the mind of Justice Cardozo in action that the author of the book under review has devoted himself. Perhaps we crave too much. Perhaps we demand an exposition that would challenge the literary capacity and keen discernment of Justice Cardozo, himself. Or, it