Whatever his views as to the correct interpretation of the Constitution, no student of our public law can afford to ignore the argument presented by Professor Corwin. The book should be read and pondered by every lawyer and law student. Those who are convinced by his presentation will find themselves confronted by yet another question: What can be done about it? It is significant that our author is distrustful of the effectiveness of "the gross, fumbling hand of Amendment,"[4] and urges that "we must still trust the Court, as we have so largely in the past, to correct its own errors," a trust which he tells us has been "justified by the event."[5]

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SUBSIDIARIES AND AFFILIATED CORPORATIONS. By Elvin R. Latty. Chicago: The Foundation Press, Inc., 1936. Pp. xxvii, 225.

To a now substantial segment of the legal profession, analysis and prediction of judicial behavior in conceptual terms is suspect. Concept-smashing is no longer news. Indeed, so far has the process developed, so prosaic has it became, that its purpose and limitations have become obscured. Some persons have ignorantly projected the process far beyond its reasonable scope. These persons have observed that lawyers and judges talk in concepts and that these concepts can be smashed, and they have proceeded to ridicule any ordered attempt to investigate and interpret those portions of human behavior with which the lawyer and judge are familiar.

Generally, there has been a great deal of concept-smashing, but very little use has been made of the virgin material disclosed by the process. It was fairly easy to indicate, after conventional concepts were smashed, that judges decide cases on the basis of hunches. It was even possible plausibly to define the hunches in terms of the judge's digestion and economic background, variously weighted. In addition, a few persons have proceeded from smashed concepts to an explanation of judicial behavior in terms of psychology or folk-ways. It has not been possible, apparently, to define these terms or to test their applicability and utility in any field with which the law is concerned; or the persons who have submitted these explanations have been so ignorant of relevant areas of conduct as to be unable to make a convincing effort. This more erudite-sounding explanation, therefore, has been little more satisfactory than the "hunch" theory.

A few persons have made a systematic endeavor to develop a method of utilizing the facts and behavior that remain after conceptualism is smashed. Notable among these is Underhill Moore. And notable also is the work that has been done in the field of vicarious liability. Particularly deserving of mention in this connection are the law review articles on the subject by William O. Douglas. In these articles conventional concepts used in talking about vicarious liability for the purpose of dealing with legal issues are smashed. But Mr. Douglas does not rest with performance of that useful

4. P. 265.
5. *Ibid.*
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service. He proceeds to reexamine the recorded instances of judicial behavior in their factual setting for the purpose of ascertaining what facts or combination of facts led to certain results, and why. Mr. Douglas thinks he can observe correlations of facts and results and he states them.

Professor Latty's book is an admirable analysis of liabilities as between parent and subsidiary corporations, somewhat similar in method to that of Mr. Douglas. He shows the defects and consequences of "the intransigent conceptualism which apparently accompanies the entity technique" in this field. He then proceeds to analyze the recorded conduct concerning liability of persons other than the corporation for claims against that corporation. The method of analysis is elaborate, precise and admirable. The type of situation with which Professor Latty is concerned is nicely defined. Deductions are made from the facts and the decisions of particular cases; the reasons stated for the decision are used, not as a basis for deducing propositions as to probable behavior, but merely for comment and observation. Ultimately, Professor Latty generalizes. He evidently believes generalization is possible as to probable judicial behavior concerning claims of vicarious liability for torts and contracts of a corporation. He states no simple test; but he suggests criteria for understanding recorded behavior and for predicting future behavior, which he supports by arguments based upon both history and economic appropriateness. For determination of problems of inter-corporate liability, he remits us to analysis of the facts in a given situation in terms "of economic unity, of voluntary or involuntary creditors, and of solvency or insolvency of the corporation against which the claim primarily lies." He discusses and describes these concepts and explores their content. He admits that they lack "mathematical precision." But, "At least, the factors herein stressed as crucial in determining liability are less unsatisfactory than the verbal extracts that one gets from comparing the text of the opinions in the inter-corporate vicarious liability cases. . . ."

It is not my point that Professor Latty's conclusions are justified, sound, helpful, or significant, or the reverse. For some of my purposes they are helpful and I think they are a plausible and justified analysis of the cases. Here and there I would elaborate; my conclusions might differ; and my approach would, because of my major interest, approximate that of Professor Berle's admirable foreword to the book, rather than of the book itself. But for present purposes, this is unimportant. It is the method of the book that I wish to emphasize—not because it is *the* method, but because it is *a* method, intelligently used in conjunction with concept-smashing in a day when method seems no longer fashionable among those who believe in smashing conventional concepts, and when iconoclasm with respect to method has reached the point of diminishing returns.[1]

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1. Indeed, a method restricted, as in this book, to analysis of the reported case material seems to me inadequate for purposes in which I am interested. This observation, however, is less applicable to the subject of Professor Latty's book than to many others.

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