

BOOK REVIEWS

WOE UNTO YOU, LAWYERS! By Fred Rodell. New York: Reynal and Hitchcock, 1939. Pp. xi, 274. \$2.50.

Boys, the jig is up.*

Fred Rodell, Yale Professor and a fugitive from the practice of law,¹ has just written an expose of the legal profession. For the first time, one has dared to rip the mask from that bastard child of justice defiled—The Law. At last the common man can know the truth. The fraud is shown, the hoax punctured. Take Mr. Rodell's word for it, the detonation is terrific.

Says Mr. Rodell, The Law is a racket² by which lawyers contrive to control and muddle our lives, a racket perpetuated by a wholly dishonest and meaningless mumbo-jumbo practiced as a phoney art by lawyer-priests to confuse the public while it is being milked for fees. He concludes that The Law should be dumped overboard, together with the lawyers (that goes for judges, too) in anticipation of a layman's era of Justice and Common Sense. Do I overstate the matter? You underestimate Mr. Rodell.

The evidence Mr. R accumulates is pretty good evidence of something or other, but our impetuous friend likes to rush for home plate without touching second or third. In the most impudent Time style (in Mr. R's hands, frequently witty but rarely good-humored) he regales his lay audience with set-up examples of legal atrocities, smashing his point home with the startling admission that The Law is comprised wholly of such stuff. Unfortunately, Mr. R does his target practice with a shotgun, his surgery with a pick and shovel. That his patient should die as a result is no sorrow to Dr. Rodell; he would rather like to officiate at the funeral.³

As a critic of particular legalisms, the author does a fair enough job of presenting a number of warmed-over realistic criticisms of The Law. So far, so good; that is, if we overlook some very sorry and historically inaccurate remarks about the doctrine of Consideration, including a tendency to get away from vivisection into the grave-snatching of legal cadavers like seals⁴ or the doctrine that charitable subscription cases rest only on the theory that subscribers furnish their own consideration through a little mutual boot-strap pulling. These, of course, are trivial matters, for Mr. R. cares very little for The Law.

Since Mr. R displays a marked propensity for confusing assertion with proof, it may be useful to extract the wheat from the Rodell. Salvaging, we learn: some legal terms mean nothing to a layman (7, 8);⁵ others mean

* Forgive me, dear reader, if I cannot avoid the contagion of Mr. R's attitude and style.

1. Don't think for a moment that Mr. R ever practiced law. It would challenge his dearest boast (p. x).

2. Introducing: the Rodellian concept of the (probably) innocent "racket" (p. 16).

3. One fears the rites may well be Mr. R's.

4. Dead in most states, anyway.

5. References are to pages.

different things to laymen from what they do to lawyers (8); lawyers do not work for nothing (16, 233); the law is uncertain, though judges (i. e., lawyers) sometimes pretend otherwise (19); the law is conservative (23, 37); the law draws arbitrary lines (47); judges sometimes change their minds (18, 19); judges sometimes disagree (97); judges frequently pretend that they are "bound" by precedent while making laws which they pretend to have "found" (24, 33, 37); judges often construe statutes in violation of their literal meanings (25-28); judges are affected in their decisions by extra-legal considerations (12); in legal opinions "reasons" are frequently only rationalizations, names for the result (55, 166). In brief, "judges are men, not gods" (265).

Although most of this is neither news nor very wicked, Mr. R has in some instances put a finger on serious ills. Few will quarrel (not even all the lawyers) with his attack on The Law's tendency to do what medicine, falconry, and all worthwhile human activity ever does: seek pseudo impressiveness through a private, and largely unintelligible, language. He also has Hypocrisy by the tail when he derides the judiciary for deciding cases as if precedent compelled their every move. Surely, the extension of candor to conceding that the court's job involves necessary and desirable judicial legislation would avoid much of the fictionizing which at best represents only an attempt to pay lip service to rules which are being amended.

Instead of resting content with twice-told tales, Mr. R goes on to generalize so extravagantly⁶ and to flaunt a naïveté so incredible⁷ that one wonders whether he really uses his words for their accuracy rather than their power to incite. Either he calculates only effects on a super-gullible laity or he has achieved an embarrassing revelation of his own fundamental confusions, a most unhappy demonstration that knowledge is not wisdom nor cleverness a substitute for a philosophy.

So long as he is hacking up specific legalisms, Mr. R is in fine fettle, but concerning the world at large he has just pierced his chrysalis. Currently, he is lost in the jungles of Semantica, where he flounders under the soul-shattering realization that after all words are just words and abstractions just abstractions. The shock has been a little too much.⁸ More

6. Take your pick: "Every lawyer is about the same as every other lawyer" (6); "the lawyer's trade is built entirely on words" (9); "you can look through every bit of The Law * * * without finding a single rule that makes as much sense as 'anyone who spits on this platform will be fined five dollars'" (12); "the alleged logic * * * of almost any Supreme Court case you could name * * * [is] nothing more nor less than an intellectual fraud" (130); "Every * * * so-called concept or principle of The Law * * * amounts to a vague legal way of stating a result, applied to the result after the result is reached" (55).

7. E. g., "Most business transactions * * * run off smoothly of their own accord. * * * If they [lawyers] would let men carry on their affairs and make their agreements in simple specific terms and in words intelligible to those involved, there would be fewer misunderstandings and fewer real or imagined causes for grievance" (177). Or am I wrong, and is Mr. R only stacking the cards? See also later.

8. "Legal words and concepts and principles float in a purgatory of their

sophisticated critics take solace in the knowledge that, although the tags of those man-made concepts and abstractions which make thinking possible are not always labelled in terms of the human ends which justify their creation, it does not follow that such concepts bear no ultimate relation to those ends.

The conscientious critic thinks also of remedies. And so, where lawyers built of clay, Mr. R rebuilds with cardboard. It is in the concluding chapters that the author displays his true stature.

Since legal words, rules, and concepts are wholly absurd ("justice can't be cut up into convenient categories"), "the sensible thing to do would seem to be to go after justice" itself,⁹ as "clarified" somewhat by written laws (252). "Statutes would all have to be redrafted * * * [by] a chosen group of non-lawyers" (255). Thus, for example, a statute providing that "First degree murder is punishable by death" would read "When a court * * * finds that one person has killed another person and believes that the killer deserves to be electrocuted, the court may order that he be electrocuted" (257).

In Rodell's Revolutionary Regime, judges would be replaced by "decision-makers," persons "trained in the technicalities of factual problems, rather than in the technicalities of legal language" (258). "So each state would have, say, a Killing Commission to apply its laws about what are now called murder and manslaughter" (263). In short, the judicial function is to be taken over by administrative agencies (266) from whose decisions no appeal would lie to "other bodies of men who knew and understood less about the real matter in dispute than the original deciders" (264). Where a dispute involved more than one specialized problem, a sort of progressive dinner party is suggested (261-2).

What happens when "experts" disagree, who is to conduct and coordinate the dinner party during its various courses, what happens to "common sense" in Justice by Specialists, how cases are to be decided without the use of rules and abstractions, Mr. R does not say. "It is not an easy, nor a quick solution. It would take time and foresight and planning" (249). But the system would be operated somehow by "men trained and qualified in the efficient and wise administration of government affairs" (263). Nice work, Fred.

In court, litigants obviously need no lawyer to mouth their lies (269). Nor does the office lawyer's advice have any particular efficacy, except to create trouble (177). "Why should not a man who wants to leave property to his wife at his death say in his will, 'I want everything I own to go to my wife when I die,' instead of having to hire a lawyer?" (270). O. K., Mr. R, but you say very little about the man who wants to include Uncle Wiggly and some others as well and who in general prefers to distribute his largesse in more complicated fashions. Perhaps, however, that is an unfair

own, halfway between the heaven of abstract ideals and the hell of plain facts and completely out of touch with both of them" (201).

question and should be reserved for "men trained and skilled in coping with practical human affairs" (273).

But time grows late and even now a disillusioned public gathers at the office door. Sneak out the back way, boys, and will someone please warn the lawyers at Yale that amongst them is a layman boring from within.

REED DICKERSON.†

LAW AND POLITICS. Occasional Papers of Felix Frankfurter, 1913-1938. Edited by Archibald MacLeish and E. F. Prichard, Jr. New York: Harcourt, Brace & Co., 1938. Pp. 352. \$3.00.

In 1936 Professor Frankfurter, Harvard Law '06, wrote: "More and more, the ablest of [the young]—in striking contrast to what was true thirty years ago—are eager for service in government."¹ In this revolutionary trend, the young law officer of the Bureau of Insular Affairs was thirty years ahead of the market which, as Byrne Professor of Administrative Law at Harvard, he helped later to supply. No doubt, he never consciously sized up the marketability of the various careers available to him and to his students. Rather his sense for latent issues—which Mr. MacLeish, in a fine foreword, terms his journalistic gift—spotted the exceptional importance in American life of "that eternal and world-wide affinity between politics and law."² His life-long attention to "public law" is striking on two counts. First, such concentration of aim would seem to run counter to his boundless curiosity and humanistic cultivation, traits revealed only by an occasional distant reference in his writing. (Professor W. P. M. Kennedy has implied that politics and law are of transcendent importance in Canada because its culture is thin and derivative;³ may not the same have been true of us, to some extent, during Professor Frankfurter's formative years?) In the second place, his constant focus on crucial, topical questions does not gibe with his insistence that research should be disinterested, almost idly curious inquiry, remote from social objectives.⁴ Although Professor Frankfurter, like every decent scholar, did his best to be objective once he had set his problem, I am sure it was not mere chance that made him ask related and socially significant questions in administrative law and criminal law administration, in social legislation, and in the role of the Supreme Court in enforcing the constitutional divisions of power.

The essays in this volume, skillfully chosen to avoid repetition, and carefully edited to avoid technicalities and footnotes, give glimpses of his work in all these fields except for criminal law, which is represented only indi-

† Assistant Professor of Law, Washington University.

1. P. 249, *The Young Men Go to Washington*.

2. Stout, *Public Service in Great Britain* (1938) 62.

3. *Some Aspects of the Theories and Workings of Constitutional Law* (1931) 99.

4. P. 287 et seq., *The Conditions for, and Aims and Methods of, Legal Research*.