THE QUEST FOR LAW, by William Seagle. New York: Alfred A. Knopf, 1941. Pp. xv, 439. $5.00.

It's a pity that Mr. Seagle's book comes out at a time when the attention of scholars, bearded and otherwise, is monopolized by the war. In peaceful days it would probably have created a first-class war of its own. Let no one be misled by the poetic charm of its title. This is no romantic dramatization of man's experience with law. This book is a fist-swinging exhibition of argumentative scholarship from cover to cover—three hundred and seventy-four pages of bristling polemic, not counting about seventy-five pages of notes and bibliographies that make a side-show almost as bellicose as the text itself.

What's all the fuss about? Well, just this. There are a lot of pundits who think they know all about law as a human institution but really know less about it than the man in the street, whose intuition and personal experience tell him that law is just a rotten mess. And that goes for most all the big-shots in jurisprudence and legal history, past and present, American and European. Their basic sin has been the failure to distinguish between justice and law, between purpose and legality, between the social aim of removing the sources of conflict among men and the judicial aim of reducing all conflict to a "litigious equation." Hence, their attachment to the dogma of "justice according to law." Hence, also, their futile and comic efforts to find in the data of legal history an encouraging story of evolution and progress—from bad law to better, to fairly good law. Pure bunk, says Mr. Seagle. Let's look at the facts—

But before we do, a word about legal history. To make intelligent use of it, let us not look at it merely with the eye of the chronological historian. Let's view it with the vision of the anthropologist, the psychologist, the sociologist, the political scientist and, above all, the economist. By doing so, we shall not only get more out of legal history, we shall also be able to avoid the tedious details and the repetitious backward-forward-and-cross references that are the curse of ordinary legal histories. For we shall find that at analogous levels of social and economic development the basic legal institutions and techniques of all peoples are similar. Thus, to get a picture of law in primitive society, you don't have to go back thousands of years and piece together the fragmentary records of ancient history. All you have to do is take a plane, a guide, and a note-book, and pay a visit to the Bantu tribes of East Africa or the Chukchee eskimos of Siberia or the Ifugaos in the Philippine Island of Luzon. You don't even have to do that. There is already plenty of first-hand literature on most of these modern primitives—literature that is hardly ever mentioned by ordinary legal historians but into which Mr. Seagle takes his reader with the delightful expertness of a native guide. Conversely, to observe the features of law in an advanced social order, one must not confine one's attention to modern American or European systems. The Code Napoleon and the American *Corpus Juris* are but products of the same social and economic (capitalistic) factors that brought forth the Roman *Corpus Juris*. And the systems of law which they portray are fundamentally alike.

The job of the legal historian, therefore, is to examine samples or types of legal systems and arrange them, not in chronological order, but in a typological order, beginning with the most primitive and ending with the most mature, regardless of time or space. The result will be a kind of "historical typology upon an ideological basis," or, as Mr. Seagle also describes it, "purveying history by sample!"

To make matters even simpler—Mr. Seagle, with all his erudition, is a grand simplifier—all legal systems apparently can be classified into three basically different types—"primitive," "archaic," and "mature." Primitive law is really not law at all. "The test of law in the strict sense is—the existence of courts." Primitive societies have no courts. Therefore they have no law. That Book II of Mr. Seagle's discussion is nevertheless entitled "Primitive Law" and that four chapters, perhaps the most interesting chapters in the entire volume, are devoted to primitive law, apparently doesn't disturb Mr. Seagle's sense of logic. Occasionally, we find him going to the trouble of putting quotation marks around, or some such qualifying phrase as "in the strict sense" after, the word *law*, but on the whole Mr. Seagle is content to let the reader make his own distinctions with regard to this and many other controversial terms, for he loves nothing more than being paradoxical. When we come to archaic law, as distinguished from primitive law, we find courts, but alas, they are not "blessed with lawyers!" Not till law reaches maturity does it become professionalized. Not till then does it meet its greatest architect—the lawyer, and from that time on "its story is a tale of the wonders he has wrought."

Wonders indeed! Behold them: *stare decisis* ("Jurists match precedents as boys match pennies.") the know-nothing jury, the monstrous system of common-law pleading, the hocus-pocus of procedure, the rule of law ("an attempt on the part of those initiated in the legal mysteries to conceal from the vulgar the lamentable fact that particular rules of law are fluid, changing, and unsettled"), the stupidity of criminal law (even "the new criminology is only a beautiful pipe dream, and a dangerous one at that"), the omnipotence of contract ("a supreme fetish"), the various attempts at codification ("a strange delusion"), the supremacy of judicial law ("the Supreme Court has been able to curb popular aspirations only because it is an integral part of the most adroit political system ever devised to frustrate the popular will") and, finally, the "principles" and "precedents" of constitutional law ("the fine points of constitutional doctrine can hardly be taken any more seriously than the subleties of witchcraft"). These and others are the sacraments of the secular religion which law becomes when it achieves maturity—a religion whose priests are the lawyers and whose High Mass consists in the transformation of all conflicts into a "litigious equation."

Enough has probably been said to indicate Mr. Seagle's primary thesis. It may be summarized in five words: Law degenerates as it matures. It degenerates because it gets further and further away from the real goal of social progress, which is essentially the permanent removal of the sources of social conflict. The judicial duel with all its ceremonials serves

merely to mitigate these conflicts. It does nothing to eradicate them. And the surest evidence of its failure is the collapse of law in the present world, or rather the collapse of the dogma of "justice according to law."

Mr. Seagle's thesis is, of course, not new. Law has already taken a good deal of de-bunking at the hands of others. The novelty of the book lies chiefly in its appropriation of materials that have hitherto gone almost untapped in discussions of this kind. Something has already been said about Mr. Seagle's handling of ethnological data. Even more striking is the economic sieve through which many of his historical facts are filtered.

With Mr. Seagle's ethnology the average reader is in no position to argue. With his economic views, however, dissension is sure to arise. Mr. Seagle is obviously of the left wing—at times a bit too obviously and too cussedly. There are moments, indeed, when the intrusion of his economic bias is as irritating as it is unnecessary to the matter at hand. Fortunately, the situation is nearly always saved by a flash of humor, as when in the midst of an encomium on primitive communism he reminds the reader that "in the nature of things there can be little or no communal interest in a loin-cloth!"

Here then is a learned book with a hefty wallop. If at times it punches foul, it gives the fans their money's worth in every round. Don't miss it. It's the best of the current legal bouts in the heavy-weight class.

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CONSTITUTIONAL REVOLUTION, LTD. By Edward S. Corwin. Claremont Colleges, printed by the Adcraft Press. (1941) pp. ix, 121. $2.00.

This little volume contains three lectures delivered by Professor Corwin at the Associated Colleges of Claremont, California. They are based in large part on, and reflect the great learning of, the author's many previous books and articles on the Constitution and constitutional law. Of these previous works, two especially, *Twilight of the Supreme Court*, published in 1934, and *Commerce Power versus States Rights*, published in 1936, are prophetic of *Constitutional Revolution, Ltd.*, and should be required reading for anyone wishing to question its thesis. In these two books is revealed such an understanding of the Supreme Court and its work prior to 1937 as alone entitles one to make a scholarly appraisal of the work of the "new" Court. Indeed, the lectures which make up the current volume may be said to be merely Professor Corwin's' *Q. E. D.* to the thesis of the earlier volumes—that much of the legislation struck down by the Court as unconstitutional could as easily have been upheld without departing from either the text of the Constitution or even the Court's own canons of interpretation.

In the first lecture, "Judicial Choices in Constitutional Interpretation," Professor Corwin briefly reviews the thesis of his earlier books that the "old" Court's rules of constitutional law could be expressed in pairs of contradictories which gave the Court an unlimited range of choice in deci-

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