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### Book Reviews

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## BOOK REVIEWS

**An Introduction to the Sociology of Law.** By N. S. Timasheff.\* Cambridge: Harvard University Committee on Research in the Social Sciences. 1939. Pp. xiv, 418. \$4.00.

A horse race could be described in terms of several organized masses of matter composed largely of carbon, oxygen, and hydrogen moving simultaneously in the direction of a fixed line at varying velocities. This may be a perfectly true account of the race. Or we could speak of beautiful animals straining every fiber of their mighty bodies as their own magnificent wills drive them toward the goal. This also may be a perfectly true account of the race. Scientists and scholars may examine some familiar subject like morality, law, or religion and their account may vary greatly from the familiar realities as seen in the light of ordinary experience. This does not mean that one account is true and the other false. It merely means that reality is a combination of what is examined and the mind which examines. Otherwise put, reality will yield different impressions from different viewpoints. Dr. Timasheff's book is a scholarly account of law as a force in social life. His account is likely to prove more than a little bewildering to lawyers and law students unseasoned in such studies. It must be borne in mind that he is dealing with matters familiar to lawyers, from a point of view not so familiar, namely that of social science.

Although obviously a Russian, the author has become a master of that complicated English with which American social scientists elevate into the realm of science even their simplest statements about ordinary matters. In order that this review may make sense to lawyers, the ideas of the author will be presented in nontechnical language. If in the process any meaning is lost, my apologies to the author.

Dr. Timasheff first marks off a field for sociology of law, and distinguishes it from jurisprudence in general, and from sociological jurisprudence. Jurisprudence, to Timasheff, is a study of legal rules, principles, and standards, that is, of the content of law (p. 24). Sociological jurisprudence is still a study of legal rules, principles, and standards, but with emphasis on the social purpose of each (p. 28). Sociology of law, on the other hand, is the study of law as a social force. It is not concerned with what the law is on any subject, or what the social pur-

\* This book is founded on lectures on sociological jurisprudence given by the author at the Polytechnical Institute in Petrograd just prior to 1920, supplemented by studies at Harvard since 1936. Dr. Timasheff has background and training in the legal and social sciences in Russia, Germany, France, and the United States.

pose of any rule is ; but rather, with how law as a whole operates as a force in society.

The central idea in the book is that any rule of conduct is law if, and only if, it is supported both by the ethical conviction of the social group and by the power center in the group. The author elaborates at length this idea that sociologically law is the overlapping of ethics and power. He expounds the nature of ethical forces, divided into social custom, morals, and law ; also the nature of power as it is centered in those who dominate the group. Law stripped of ethical group conviction is merely arbitrary decree ; stripped of the support of the power center it is mere custom or morals. Having established the nature of law, Dr. Timasheff applies his analysis in the discussion of such matters as changes in law as it grows from primitive to modern form, the integration of law in culture, and the like. A particularly apt application of his analysis is to be found in his account of the nature of international law (pp. 260-262). The book ends with a chapter on the vindication of law, in which law is contrasted with no law, that is, with anarchy. Having explained law in the light of the forces which produce it, Dr. Timasheff has prepared the ground for the principal objection to anarchy, namely, that there is no such animal. Forces working in groups of human beings as they are produce law, not anarchy ; if we conceivably could establish an anarchistic social group, these forces would begin producing law in it.

This book among its own kind is excellent. It is sure to be read with profit by scholars. The author has organized into his views a vast amount of learning. His acquaintance with the work of other scholars in related fields is prodigious. The book contains no more inaccuracies than are usual and to be expected in a single volume covering a field so large and knowledge so great.<sup>1</sup> The author has proved himself capable of clear and penetrating observation. Note this pungent sentence (p. 155) : "The institution of money, with all its ramifications (credit, stock exchange, et cetera), forms a curious adaptation of the mentality needed for games to more serious purposes." The author frequently refuses to be fooled by the complicated thought systems of

<sup>1</sup> For sample inaccuracies the following may serve. Speaking of ethical rules the author says (p. 88), ". . . when one is taught by experience that a rule one recognizes is not carried out or is no longer carried out by others, one gradually loses the impulse to act in accordance with it oneself. *Obviously it could not be otherwise.*" (Italics mine.) Beyond question the author's generalization holds true in most instances, but when he states that it could not be otherwise, he shows that he has yet to become acquainted with a genuinely moral man. For example, the more people lie, the more resolutely a few people adhere to the rule of meticulous truthfulness out of repulsion to liars and lying, and out of their own love for truth. A more obvious inaccuracy is to be found in the statement (p. 90), "Lawyers and students of law are supposed to know the totality of legal rules. . . ." The author did not appear to be joking!

his fellow scholars; many times he keenly criticises their views. At other times he appears to be completely taken in. For example he quotes with approval (p. 146), "It is more likely . . . that conscience is the reflection of public opinion rather than public opinion the reflection of conscience" (Ross, 64). 'Conscience is an inner mirror of public opinion, an anticipated feeling of what would be the experience if secret sins were made public.' Oversimplifications such as this bring scholarly theories under deserved suspicion. Into the compound called a man's conscience has gone much that this theory leaves out. Included are religious faith, a feeling of the grief which a wrong may cause someone else, and the like. The reviewer is of the opinion that into the compound has probably gone a man's whole life. (Perhaps if the reviewer were a social scientist he could dress this idea in a few hundred pages of abstruse English and thus gain credit for a tremendous discovery. But it may be that somebody else has already done the job, and accordingly *he* has received the credit for discovering—what we knew before.)

The reviewer notes that Dr. Timasheff repeats as fact (p. 36) the latest guess of the psychologists as to the mechanics of thought. At least I suppose it is the latest guess; it is not a very convincing one, and will no doubt presently be superseded. This business of setting out guesses as facts is a practice much too common in academic circles.

Should lawyers and law students read this book? To answer that question, the general scheme of the book should be explained. The scheme is one in common use by scholars in many fields. The scholar examines some subject, like law, which is the sum of innumerable events, experiences, and ideas, almost as varied as life itself. He gathers together a considerable number of related events, rules, or other data, and makes a generalized statement, or abstraction, covering them all. Other data are covered by other abstractions. When he comes to write his book, he is likely to talk, not about the familiar events or rules, but about the abstractions. The game is to build out of the abstractions some thought structure, some mental house made of the abstractions. This urge in scholars to take some infinitely varied aspect of life, and organize the whole subject by some scheme of abstractions painstakingly fitted together results in books such as the one under review. Inherent in the process are a number of vices.

First, the ideas are abstract and complicated.

Second, a good deal of space is likely to be spent disputing with other scholars as to the most ideal abstractions to cover the known facts. For example (p. 136), the author raises the disputes as to whether religion is a species of ethics, and whether a separate category called

custom exists. Such disputes are important to scholars, but interest of laymen when confronted with these matters is likely to flag.

Further, when a scholar has built a house of abstractions to organize knowledge in a particular field, it often proves that simple and well understood facts do not fit into the house of abstractions without a good deal of intellectual pinching and squeezing. For example, Timasheff says (p. 330): "From the individual's viewpoint, the most general function of law is the redistribution of forces within society." This abstraction fits such laws as minimum wage statutes or burglary statutes. But the law requiring traffic to keep to the right on highways redistributes no force, at least, not without a good deal of squeezing to make the substance fit the generalization. From the individual's viewpoint the function of this law is to enable him to use the highway without colliding with the other users. True, if he does collide with a husky truck driver who is on the wrong side of the road the law may aid him to collect damages instead of a black eye, and thus redistribute force between them. But this is not the principal function of the law; the principal function to the individual is to enable him to use the highways successfully. So also to the individual the principal function of real estate recordation statutes is to enable him to engage in real estate transactions safely.

Another drawback to this kind of book is that scholars dealing with abstract and complicated ideas tend toward the use of abstract and complicated English. This is natural, but unfortunate. The more complex the idea the greater the necessity for expressing it simply and plainly. Quite the reverse appears in Dr. Timasheff's book; in place of complex ideas put in simple English, simple ideas are put in complex English. Witness this statement (p. 5):

"The conclusion is: the normal motivation by law is in force with regard to almost the totality of citizens in the large majority of life-situations in which the transgression of law is practically possible and would correspond to the resultant of natural (i.e., of nonsocialized) drives."

Can it be that the author simply means that almost everyone usually obeys the law even where he would like to and could violate the law? Note, in the author's sentence, the jargon which so appeals to social scientists. Are citizens likely to find themselves in situations which are not "life-situations"? Why not just say "situations", and be done with it? Is there any difference between "the totality of citizens" and just plain "all citizens"?

The author says (p. 87), in speaking of recognition of ethical rules, "Recognition, insofar as it is directed toward one's own behavior, is

not so much the ethical 'profession' of an individual (verbal statements of his principles of conduct), as his actual ethical attitude, i.e., his readiness to act in accordance with certain ethical rules. Discrepancies between these two are not at all rare." One has to look twice to see in this splendid verbal dress the homely old truth that a man's ethics are to be found in what he does, not what he says. At another point (p. 96) the author takes half a page to say what a man on the street would say in this terse sentence, "We don't like to see a man do wrong and get away with it."<sup>2</sup>

These criticisms do not mean that this book is inferior. On the contrary, as said before, this book is an excellent one of its type. The criticisms are leveled at the type. They would be true of most of the books on jurisprudence the reviewer has read, even some of the most famous of such books. The reviewer believes that study of the law as a system should be undertaken by every law student. Many now learn laws, but learn very little about law. But if a student or lawyer begins his study of law as a social institution with a book like Dr. Timasheff's, his interest in a subject which can be made fascinating is likely to be killed. The book is simply too heavy going. A taste for this sort of reading must be acquired. Dr. Timasheff's book is no place to begin.

FRANK W. HANFT.

Chapel Hill, N. C.

**Practicing Law.** By Silvester E. Quindry. Washington: Washington Law Book Co. 1939. Pp. vii, 567. \$3.75.

The title reveals the mission and substance of this book. The author, with thirty years experience in the practice of law, attempts to point out those details of a legal career which will aid embryonic lawyers.

Although set up in acceptable hornbook fashion, with chapters broken up into innumerable sub-topical sections, the book is not strictly a legal publication. It is written in a popular style, more appealing to laymen seeking an orthodox picture of lawyers and law practice. Its treatment of important problems in the modern legal field is narrow and superficial. The chapter on specialization could be expanded into an entire volume; and undoubtedly such an effort would prove extremely valuable to both student and practitioner, affording guidance where most needed, since the problem of specialization has to be resolved by an ever increasing number of the legal profession. It would

<sup>2</sup> It would be ungenerous to make this criticism if the style of the book were traceable to the fact that the author is a foreigner, unfamiliar with our language. This is far from true; the author's command of English, on the contrary, is likely to outrun that of many native born readers.

be unfair, however, to criticize the book's treatment of such problems without acknowledging that "general observations must suffice" (p. 140) is the key to the author's approach. This is not a master key for the entire book, however, for the author discusses in detail many unimportant ABC's of practice which should prove boring to the intelligent reader. The subject of how to secure a competent secretary (p. 516) occupies just as much space as the subject of contingent fees (p. 421); yet, the importance of the former can be pointed out in a single sentence while the latter is a very difficult problem with a need for honest analysis.

There are many interesting anecdotes spread through the book concerning the experiences of lawyers young and old. The reviewer felt that the book would have been far more entertaining and valuable had there been more of these stories with reliance on the reader's intelligence to draw therefrom the lesson to be learned. In this manner the "entertaining way" style of the author would be achieved and in the process the didactic style would be de-emphasized.

Throughout the book are practical bits of advice, for example, the need of some study of accountancy in pre-law preparation, the danger in splitting fees with a lay agency, etc. Thus, it is not without merit and has some valuable information for the law student.

NATHANIEL GRAVES SIMS.

Book Review Editor.