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### Book Reviews

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## BOOK REVIEWS

**Reason and Unreason in Society.** By Morris Ginsberg. Cambridge: Harvard University Press. 1948. Pp. vii, 327. \$4.00.

The subjects treated in this book are so many and so diverse, and the chapters were written at different times over such a long period, that an exact account of the author's position cannot be produced on a single reading by a reviewer; a close comparative study would be necessary for such a purpose. Accordingly this review does not purport to be anything more than a general impression gathered from a single reading. The book consists of fifteen lectures and essays presented or written over a fifteen-year period from 1929 to 1944 by Morris Ginsberg, at present a Professor of Sociology in the University of London, plus a first chapter on the problems and methods of sociology. Each lecture or essay forms a chapter in the book. The subjects are highly diverse, varying from Anti-Semitism to Stammler's Philosophy of Law. The chapter titles indicate the subjects treated. The titles are: The Problems and Methods of Sociology, The Contribution of L. T. Hobhouse to Philosophy and Sociology, The Life and Work of Edward Westermarck, The Sociology of Pareto, Recent Tendencies in Sociology, Social Science and Social Philosophy in the Universities, National Character, German Views of German Mentality, The Causes of War, Anti-Semitism, Stammler's Philosophy of Law, The Concepts of Juridical and Scientific Law, The Function of Reason in Morals, The Individualist Basis of International Law and Morals, The Unity of Mankind, and Moral Progress.

The lectures and essays seem to have been separately produced for different occasions, but the author organizes them into three groups, and tells us in the preface that the first group gives an account of the principal problems and methods of sociology and an analysis of the work of some outstanding sociological thinkers, that the second group is devoted to a study of national character and the causes of antagonism between nations, and that the third deals with a group of problems on the borderline between sociology and social philosophy. He also tells us that the central theme of the book is the part played by reason and unreason in human affairs. All this may be true, but the reviewer still came away with the impression that this is a collection of miscellaneous essays on diverse subjects, each of them important enough to engage the attention of a thinker in the field of social conduct such as Ginsberg. The part played by reason and unreason in human affairs is a recurrent theme in the book, rather than a central theme; the thread which runs

through the whole book and holds it together is nothing less than Ginsberg himself, his penetrating thought and characteristic viewpoint.

Only two of the chapters have as their subjects matters of direct concern to juristic thought; one is the chapter on Stammler's philosophy of law, the other is the chapter on the concepts of juridical and scientific law. In this latter chapter Ginsberg is not content to accept without question the conclusion that scientific laws are different in character from juridical laws. In connections with a possible difference, namely that juridical laws operate in the realm of what ought to be, whereas scientific laws operate in the realm of fact, Ginsberg points out that this means that whatever may be the conditions which determine legal rules, the obligation to obey them is moral, and that to justify their command it is not enough to show the psychological or sociological conditions which cause individuals to feel obliged to obey them. He then concludes that whether there is a real distinction between juridical and scientific laws depends on whether obligation is a category *sui generis*, or whether it can be analyzed in terms of psychological or sociological fact. Ginsberg finds a connection between what men conceive to be the true nature of scientific law and what they conceive to be the true nature of juridical law, a connection which he summarizes on page 239. What he is driving at can be shown by quoting the first paragraph of the summary:

"Those who start with an atomic conception of nature, of things externally related to each other are likely to form an 'individualist' conception of the social order and to conceive of law as imposed or externally related to individuals. On the other hand, those who stress the interdependence of things are likely to form an 'organic' conception of society and to think of juridic law as immanent in society."

It is doubtful whether this relationship demonstrates anything more than the familiar fact that there are styles in men's thoughts as well as in women's hats; that viewpoints originating in one field of thought are likely to be copied in others.

The style of the author's writing varies strikingly with the subject under discussion. The lawyer who has a newly found interest in sociological thought by reason of its bearing on juristic thought would probably find his interest waning rapidly if he were to read the chapters having to do with sociological theory. There are in the book frequent quotations in German, and there are other passages written in the gobbledygook or dialect spoken by social scientists. Thus, page 107: "In psychology we concentrate on the subjective act. In phenomenology we are concerned with the objective reference in so far as it is immanent in the act, and we seek to disentangle the root types of mental functioning or ultimate modes of objective reference." The reader who does

not understand German is better off than the one who does not understand gobbledygook, for the author usually explains the meaning of the German, but not of the gobbledygook. Frankly, the reviewer, who has only a fair understanding of both languages, found the German the easier to understand. Much of the book will be of a minimum value except to those already well grounded in the field of thought covered. It is not for beginners. But because the book is composed of lectures and essays prepared for different occasions, other chapters are comprehensible to a reader without specialized knowledge.

The principal value of those portions of the book wherein Ginsberg discusses sociological theories lies in the fact that he is not easily taken in by the merely plausible. An example is to be found in his discussion of Westermarck's view that the morally good is that which is apt to give rise to the emotion of approval, and that the morally bad is that which is apt to give rise to disapproval. According to Westermarck these emotions are neither true nor false but present or absent. Thus morality is put on a tangible foundation. But Ginsberg convicts Westermarck of not reacting accordingly to his own theory; Westermarck states that in the course of social evolution morality has become more enlightened. But, says Ginsberg, this is a value judgment going beyond Westermarck's own emotional approval or disapproval of the changes which have occurred. Throughout the book Ginsberg is revealed as a man who would make a very poor ideologist; he is too prone to turn up facts and ideas which do not fit into pat schemes of thought. Neither does he swallow greedily current notions merely because they are pleasant to the popular taste. Thus in his consideration of whether there are racial character traits Ginsberg is in no haste to accept the "liberal" answer that there are not. Instead his discussion of German views of the German mentality brings to light characteristics of the German. However, Ginsberg tends to emphasize the historical circumstances and environment which produce such characteristics, and to shed doubt on whether they inhere in racial stocks as such. One line of inquiry not raised by Ginsberg might prove fruitful; that is, when Germans are transplanted to other countries, such as America, where the environment and historical tradition are changed, do these German characteristics persist in the second and subsequent generations? Casual observation would lead the reviewer to suspect that they do.

In other instances Ginsberg appears to swallow without a shudder ideas so implausible as to cause even a much less acute mind than his to gag. Thus he twice sets forth, pages 71-72 and 306, apparently with tacit approval, and at least with no indication of disagreement, Westermarck's view that the severe condemnation of homosexual practices in Christian countries can be traced to the abhorrence felt for these acts

by the ancient Hebrews on account of their association with idolatrous cults. He also sets out, without dissent, Westermarck's view that in Christian Europe the growth of rationalism is bringing about changes in the attitude of law and public opinion on this subject. This account of the origin of Christian aversion to homosexual practices will not do. It is doubtful in the first place if more than a tiny fraction of the Christians who abhor the practices ever heard of the fact that they were indulged in by idolatrous cults, or were much more influenced by the Hebrew view on the matter than they were influenced by the Hebrew view on the eating of pork. In the second place, feasting was also practiced by ancient cults, but there is no Christian aversion to the practice. And if it be true that rationalism is bringing about a change in the attitude of Christian Europe toward homosexual practices, it is Westermarck's own type of dubious mental output which is in part responsible. Westermarck's position on this matter illustrates the fundamental fallacy of looking for right and wrong simply in human reactions, as if right and wrong had no other existence. This is done by thinkers who would deem it a bit queer to look for odors in the human nose.

It is obviously impossible in the space of such a review as this to give detailed consideration to each of the lectures and essays contained in the book. But the last lecture in the book, being also the most recently given, and, in the reviewer's opinion, the best, is worthy of a brief separate comment. This chapter deals with the subject of moral progress. Ginsberg points out that the idea of progress which dominated the thought of the latter part of the nineteenth century was badly shaken by the disastrous events of the twentieth. In reexamining the question Ginsberg finds that the moral codes of primitive peoples contain general principles also found in the moral codes of more advanced peoples. But he finds that changes have taken place. First, whereas moral requirements in primitive societies applied only between members of the same small group, the tendency is toward making them inure to the benefit of all other people. The second trend is toward accepting right for its own sake and not by reason of any other compulsions. Related to this is the stressing of inward motives and not mere outward confirmity; purity of heart and not mere observance of rules. A third trend Ginsberg, with his singular talent for obscuring at times first class ideas in bunglesome phraseology with a scientific flavor, calls "growing rationalism of the moral judgment." He apparently means the tendency to take into account in ethics the knowledge gained from other social sciences to the end that ethical purposes may be more effectively realized. This is by no means a complete summary of this lecture, but it will serve to illustrate the direction and excellent quality of Ginsberg's thought. He does not, however, give sufficient considera-

tion to two exceedingly important factors in moral growth or decay. One is the will to live according to the morals we already have. The other is the fact that moral exercise develops moral strength. We grow in moral understanding by moral living and by seeking such understanding. These are views supported by religion, and Ginsberg's relegation of religion to a relatively minor place imposes the principal limitations visible in his own understanding.

FRANK W. HANFT.

Professor of Law  
University of North Carolina  
Chapel Hill, N. C.

**Judicial Doctrines of Religious Rights in America.** By William G. Torpey. Chapel Hill: The University of North Carolina Press. 1948. Pp. 376. \$5.00.

This reviewer is a layman as to law and not competent to judge technical legal questions; but the present volume appears a competent and comprehensive survey of both federal and state judicial decisions relating to religious rights. There is a brief but clear account of the historical development of the American doctrine of separation between church and state. The analysis of judicial decisions is logically and conveniently arranged. A more extensive index would have been helpful. Wishing to turn back to a particular case, I was unable to locate it in this guide. The bibliography is in some respects deficient. Zollman's *American Civil Church Law* (1917) has been replaced by the same author's *American Church Law*, published in 1933. And one would expect to find in such a book reference to M. Searle Bates' *Religious Liberty*, the definitive work in this general field. But despite these criticisms, Dr. Torpey's volume should serve as a useful handbook for both the legal profession and church officials. And this is apparently its primary purpose.

General interest in the subject, however, will be more concerned with its bearing on the whole problem of religious liberty and the relation between church and state. The writer makes a number of suggestions for further clarifying "a working concept of religious freedom," but these deal with relatively minor questions. From this and the tone of the book as a whole, the reader might assume that American democracy has in the main solved this problem. Such is not the case. Rather, the issue is now presenting itself in peculiarly difficult forms, and it appears that in the period just ahead this will be one of the most critical problems facing society. That this is so is demonstrated by the fact that Dr. Torpey's book, even as it came off the press, was at some important points out of date. He mentions (p. 267) the far-

reaching decision of the United States Supreme Court in *McCollum v. Board of Education*, which evidently became available too late (March, 1948) for him to analyze its implications. The North Dakota ruling permitting the wearing of distinctive religious garb by public school teachers (p. 260) has now been reversed by constitutional amendment. A United States Supreme Court decision this year has cast doubt on the Court's ruling in the famous *Macintosh* case. Among important cases now in the courts are: in Pennsylvania the appeal of a Jewish woman who was denied unemployment compensation because she refused to work on the Jewish sabbath; in New York a case calling for further clarification of the status of week-day religious education; and in New Mexico an attack on alleged widespread use of schools for sectarian purposes.

That this should be a continuing problem is in the nature of the case. The established American principle is that the individual has complete religious liberty except where it infringes upon the rights of others or endangers the public order and safety. But to draw a fixed line between private conscience and public concern seems quite impossible.

This difficulty is accentuated by certain pressures now at work. One is a new awareness among Christians of a tension between the tenets of their faith and the prevailing standards of our culture. It has been judicially stated that Christianity is a part of our common law (p. 31). But many churchmen are increasingly convinced that there is a much greater distinction between Christian ethic and common law than was once supposed. This will inevitably lead to a growing number of conflicts between the dictates of conscience and the demands of the state. Second, there is a growing belief among Christians that schools from which religion is excluded are positively irreligious. One judicial decision says that to permit religious worship or sectarian instruction in the public schools would be to compel parents "to expose their children to what they deem spiritual contamination." But some believe that to present to children a view of life that does not include religion is by inference to teach that life can be understood without reference to religion: in effect to teach atheism. Such a parent might justly contend that in a completely secularized school he is compelled to expose his children to what he deems spiritual contamination. To say this is not to dispose of the problem but to indicate its complexity. A third pressure is the increasing activity and influence of the Roman Catholic Church, which undeniably has a different theory of the relation between church and state from that which is traditionally American. Still another factor is the widening area of governmental authority. In part this is due to the growing conception of the welfare state, where the

function of government is conceived not simply as that of protecting citizens from interference in the pursuit of their rights, but as including a duty to guarantee conditions of health, security, etc. This growth of governmental authority is now enormously intensified by the threat of total war, when it seems imperative for the state to control every area of life and thought for the sake of its own existence. If the present trend continues, experience teaches us that we need not expect the sphere of religious belief to be spared from these encroachments.

To this reviewer the chief value of Dr. Torpey's volume is in its documenting the fact that thus far our American judiciary in dealing with questions in this field has shown sound balance, a marked degree of insight into religious values, and a determination to grant the utmost possible freedom of conscience. Thus the courts have made themselves one of the chief bulwarks of our religious liberty. We shall have increasing need for such judicial safeguards in the period upon which we are entering.

HENRY G. RUARK.

University Methodist Church  
Chapel Hill, N. C.