

advice and "will himself a beast of prey." Of course, well brought-up, wholesome American people do not will things like that, but they could if they wanted to.

If there is anything that distinguishes our ethical thinking from that of former times, it is the disappearance of the notion of man's nature. This is the missing constant in our thought. It is the lack of it that explains the relativism which inheres in all our ethical judgments, for without it, no condemnation of evil can carry real conviction. Jefferson and Marshall would never have defined our present differences with the Führer as a choice between different "ways of life." They would have said quite simply that Hitler is *wrong*. They would have said that man cannot make himself a beast of prey without ceasing to be a man, without losing, in other words, his capacity to enjoy what he seeks to obtain through rapine. They would have regarded *Mein Kampf* not simply as a wicked book, but as a mistaken book. It would have been possible for them to do this because they believed that man has a "nature" about which he can make mistakes as easily as he makes mistakes about the physical world that surrounds him.

Mr. Adler has, I believe, performed a real service in restoring the notion of man's nature to a central position in our thought. Where he seems to me to go wrong is in attempting to reduce this nature to syllogisms. Here, I think, he bites off more than he can chew, and considerably more than anyone should be expected to swallow. As for what man's nature really is, everything seems to me to point to the fact that there enters into the mixture a little plasma along with the syllogisms. We would do well to recognize this fact even though it embarrasses somewhat the neatness of our demonstrations. That man's nature exists, that we can be mistaken about it, that it furnishes a standard for judging our actions, that it is wise for us to study it—none of these things seems to me to require us to pretend that we already understand it fully. In assuming the contrary, Mr. Adler seems to me to do a disservice not only to the cause of ethics, but to the cause of rationalism, as well. For I believe that rationalism should teach a persistent effort to understand, not a denial of the reality of that which is not yet understood.

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Sociology of Law. By Georges Gurvitch.* New York: Philosophical Library and Alliance Book Corporation, 1942. Pp. xx, 309. \$3.75.

Georges Gurvitch has set himself two main tasks in this book. On the one hand, he wants to give a thorough and comprehensive accounting of the sociology of law, taking stock of accomplishments and failures from Aristotle and Montesquieu to Duguit, Max Weber, and Roscoe Pound. On the other hand, he means to elaborate, by way of avoiding past impasses, a system of valid concepts about the approach to legal phenomena, on the basis of which the necessary tasks would become clearly intelligible. It must be said that both attempts have been crowned with conspicuous success in this relatively little book, notwithstanding some shortcomings.

The book consists of an introduction and five chapters of unequal length. After a somewhat lengthy exposition of the problems which he found in the field, the author devotes the physical bulk of the book to a brilliant survey of the writers, past and

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present, who have either directly or indirectly contributed essential ideas to the sociology of law. This review of the young science serves Mr. Gurvitch's purpose of tracing tragic misunderstandings between the different schools, especially between jurists and sociologists, to the ultimate root of false conceptual constructions. Thus the critical summary of the results achieved in the field is the necessary starting point for Mr. Gurvitch's own theory, which is contained in the four remaining chapters.

The organization of the material in these chapters is extremely convincing, but it is intricate and so closely reasoned that it would be impossible to summarize it as a whole. Suffice it to emphasize three points which to my mind constitute the most suggestive contributions of Mr. Gurvitch's thought: his definition of law, his conception of the "normative fact," and his elaboration of the three distinct levels of sociological research in respect to law. These notions seem outstanding, not only because of their position in the system of this book, but also because they are pregnant with significance in other social sciences, notably in history and government.

Mr. Gurvitch's conception of law is based on the achievements of nineteenth century thought. While benefiting from what positivism had to teach, however, he very happily avoids the sterile separation between "nature" and "spirit" ("Sein" and "Sollen") which has cramped the evolution of positivism and has finally frustrated the scientific validity of this school. Gurvitch insists rightly that law by its very essence embodies spiritual values in real and observable facts. Only a "collective act recognizing spiritual values" can be experienced by the human mind as a legal phenomenon. He continues to combine the spiritual and the factual elements of law in the two conceptions by which he further elaborates his idea of law: the notion of justice and that of the "normative fact." Justice is not merely the moral component of law, being as such opposed to the elements of security and stability, but it is an "amalgam of values and logical ideas" of which "the principles of order and security are immanent elements." Moral values, often in conflict with each other, "require for their always partial realization a preliminary reconciliation through justice." In other words, justice is a harmonization of conflicting ideals and values. Such a harmonization occurs within the framework of all concrete collective groups, which is the reason why justice can never be determined in an abstract way, but can be referred to in a specific situation.

Other characteristics of law are its conservative tendency, which distinguish it from the "dynamic, creative and driving" power of moral values, the multilateral character of its rules, which always link the duties of some to the claims of others, and the fact that it derives its validity from "normative facts." This latter idea is one to which Mr. Gurvitch himself rightly attributes crucial importance. It is this concept which makes it possible for him to draw the scope of law much wider than the body of rules which are equipped with sanctions, and yet clearly to distinguish positive law from mere ideas about law. It is not the element of constraint which makes a rule a legal one, although law does admit of constraint whereas the very nature of moral obligations is opposed to compulsion. But law can derive its authority and positivistic character from other sources than constraint. Any fact which actually reveals the collective recognition of spiritual values establishes the validity of a legal rule.

A normative fact is thus "each manifestation of social reality capable of engendering law." "The act of recognizing values in facts is quite different from direct participation in those values. One may, e.g., be insufficiently endowed to grasp the aesthetic values of a symphony, but this does not in the least prevent one from feeling indigna-

tion against whomsoever may disturb the quiet of listeners. The disturber will be regarded as acting against 'justice.' It is clear that this notion of the "normative fact" enables Mr. Gurvitch to apply very precise tests to the finding of legal rules, and yet dispenses with the necessity of having to oppose a special "living law" to "court-made law" or to statute law.

Mr. Gurvitch's theory thus opens up wide vistas of a new understanding of legal phenomena, an understanding which is eminently important in a period like ours, where spontaneous rules and institutions of law break out into violent fights with the officially recognized tradition. It goes without saying that great care must prevail in applying Mr. Gurvitch's ideas to practical jurisprudence, a warning which is set forth with great emphasis in Dean Pound's preface to the book. Yet there can be no doubt that this work will go far toward overcoming the sterile hostility between the "high priests" and the "critical observers" of law.

Equal significance must be attributed to the distinction between the three branches of the sociology of law, upon which Mr. Gurvitch has based the organization of his book. It is one thing, he maintains, to study the "types of sociality," another to study the legal systems of collective groups, or of "inclusive societies" (i.e., cultures), and still another to study the "genetic developments" of legal phenomena. Many untenable ideas can be traced back to a confusion between these three distinct tasks of research. While he dedicates only a few pages to the last-named of these problems, the main effort of his theory is concentrated on the elaboration of the first two categories. The study of "kinds of law" he calls microsociology, a discipline the object of which is the numerous and typical ways in which human relations are clothed in the forms of legal guaranties. These various and manifold "kinds of law" are brought into harmony with each other through the comprehensive "frameworks of law" (such as state-law, trade-union law, family law, etc.). And between the various "frameworks of law" existing together in one society, a harmonious equilibrium is reached by the synthesizing action of the "system of law" (which is a function of the culture, e.g., feudal law, bourgeois law, archaic law, American law, etc.). Thus these three branches of sociology work on different levels and have different problems to cope with. This differentiation is a major contribution, for it is decisive to realize whether a particular legal conflict springs from a typical form of relationship in society, or from the incompatibility of two legal "frameworks" pertaining to conflicting groups. By a sagacious system of classification, Mr. Gurvitch reduces the properties of legal relationships to a number of basic criteria, and by combining those fundamental traits he is able to characterize sharply the nature of any legal conflict.

A similar attempt to classify the possible types of groups cannot be held equally successful, and when it comes to the classification of "inclusive societies," Mr. Gurvitch throws himself wide open to obvious criticism. This touches on one of the main weaknesses of the book, which is the tendency to assert and define a conception in an apodictic way, without any attempt to verify its accuracy by examples and references to facts. In many instances the reader can verify these conceptions for himself, but when the author uses his own unverified conceptions in order to derive important conclusions from them later on his method becomes objectionable. This is particularly manifest in the chapters on groups and organizations and their law-creating capacities. It is the apodictic brevity of Mr. Gurvitch's statements which accounts for the organi-

zation of the book, in which two thirds are devoted to a critical review of other men's writings, and only one third to the exposition of the author's own ideas.

However, this last third of the book is packed with extraordinary density, and its fruitful and interesting ideas are a rich reward even for the reader who does not always agree with them. Unfortunately, there is no index to help the reader retrace his steps. This must be held a serious mistake, for a book of this kind cannot be merely read, but must be carefully studied and restudied.

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America's Strategy in World Politics. By Nicholas John Spykman.* New York: Harcourt, Brace & Co., 1942. Pp. 500. \$3.75.

The theory of law suggested by some passages in this book makes it particularly interesting to lawyers. It is the view that law is simply an expression of physical power, or force. This view has of course been maintained by many thoughtful students. The author seems to attribute it to Thucydides, quoting from him at the outset a statement by an Athenian representative threatening the little island of Melos. Thucydides' history is, however, a systematic criticism of the theory of force. Thucydides was opposed to the small-capitalist democratic imperialist party in Athens, and his history is a cold if not unprejudiced attack on its policy. The Melian episode occurred when the democratic party was probably under the leadership of Alcibiades, and not long before the ultimate disaster to Athenian power which resulted from Alcibiades' expedition to Syracuse. The ironical emphasis and timing of the episode suggest therefore that Thucydides saw in the position of the Athenian leaders a symptom of the fatal illness of his age.

Pareto is a provocative modern exponent of the force theory of order. The reviewer does not agree with this theory and neither in the end does the author. Both agree, nevertheless, that Americans may easily overlook the importance of force in considering the affairs of Europe and Asia. Even today we may need to remind ourselves of the necessity for dealing skillfully with power impulses in the effort to develop some sort of world order.

Mr. Spykman criticises some Americans for supposing that the country was safe without regard to the balance of power in Europe and Asia. However, some of those whom he criticises have pointed out that at least until the invasion of Russia there was an opportunity for the maintenance of a long-time balance which would strengthen our defensive position. Again Mr. Spykman, while giving a full and interesting account of the present strength of our defensive position, emphasizes the danger of invasion from northern outposts in both the Atlantic and the Pacific. His account of the danger assumes the continued cooperation, in the event of their victory, of Germany and Japan. American policy might, however, even under the worst imaginable conditions, derive some benefit from inevitable tensions between these two powers.

The book is primarily an exposition of American interest in maintaining a balance of power in Europe and Asia after victory by the United Nations. The author was born in the Netherlands and lived in Europe during his early years. He has been for

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