

critique of Cossio's theory is therefore bound to inquire into the correctness of these two radical differences. Kelsen himself categorically denies the interpretation of his theory by Cossio. Cossio answers that the author's own meaning cannot be decisive—Columbus discovered America, not a new route to India. But we need not go further into this problem because it is closely connected with Cossio's conception of the dogmatic science of law as an empirical science.

Kelsen's goal was to create a science of law by liberating the traditional jurisprudence from the foreign elements of natural law and natural science. Now, Cossio, who only considers the *positive* values of a legal order, remains strictly within positive law with no excursion into metaphysics. But the moment he considers human conduct as the object of the dogmatic science of law, is he not bound by, or, at least, in danger of arriving at, a sociology of law? Certainly, this is not his intention but, as he himself points out, the author's own opinion would not be decisive. Cossio defends himself vigorously against the "sociological reproach." True, he says, his theory and sociology of law both take human conduct as their object but the object and methods are entirely different. Sociology of law applies the method of explaining on the basis of the principle of causality; his theory studies human conduct through the comprehension of spiritual meanings. The jurist is not interested in a causal explanation of human conduct; he is interested in the significance of human conduct. Human conduct is not viewed by his theory, he says, as a part of nature but as the full life of man; it is viewed phenomenologically, or from the point of view of the philosophy of life.

To this writer it seems that one can disagree with Kelsen's philosophical convictions. One can say that the juridical approach toward law is neither the only scientific nor a self-sufficient approach; one can criticise Kelsen's relativism and skepticism in seeming to imply that a sociological cognition and a valuating critique of the law are hardly possible on scientific lines. But all that does not alter the fact that in his "pure theory of law," in which Kelsen voluntarily restricts himself to the juridical approach, Kelsen is right. *For the jurist* law is a system of norms. The juridical approach, as Kojouharoff stated, deals with verbal propositions which are capable of a formal approach *only*. As the great English jurist Holland said, "Jurisprudence is the formal science of positive law."

JOSEF L. KUNZ*

Breaking the Building Blockade. By Robert Lasch. Chicago: The University of Chicago Press, 1946. Pp. xiii, 309. \$3.00.

Though but a few months have passed since the appearance of Mr. Lasch's excellent volume, much has happened in the housing field. Or to be more precise—much has been allowed to happen and much more undone. The OPA has been scuttled, the Wagner-Ellender-Taft housing bill stymied in committee, and controls vital for the channeling of materials and labor into home construction have been removed. The Veterans Housing Program itself, inaugurated so vigorously by Mr. Wyatt and supported so enthusiastically by the White House at one time interested in "no little plans," has been abandoned.

With the departure of Mr. Wyatt from the Washington scene, it should be plain to all that our housing policy is "building-as-usual." Mr. Wyatt said that that wouldn't

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do last February; it won't do now. Nonetheless responsible officialdom candidly admits that veterans—apart from a very few with ample incomes—must rely on the hand-me-down process for housing. And, unfortunately, there is no longer reason to doubt that we are ready to throw the maximum of resources into homes for the well-to-do (most of whom are comfortably housed), thereby ensuring, even when the boom is succeeded by the inevitable bust, a steady increase in an already appalling supply of slums. While it is easy (but no less necessary) to question the wisdom of this deliberate turn of events and to denounce it as a shameful betrayal of the veteran and a surrender to special interest, one cannot deny that it is completely in keeping with the best traditions of American housing.

Mr. Lasch does an admirable job of telling us what those traditions are, how they got that way, what they cost us in terms of human and material blight, and what we must do to free ourselves from them. He details the reasons for high construction costs—the inflated land values, the extreme decentralization and lack of organization in the so-called house-building industry, the restrictive practices of builders and unions, the unnecessarily high financing charges. And by examining these he shows how our present wretched housing conditions—which have been wretched for generations—and the difficulties we meet in improving them have their origin in a haphazard and unplanned system of home-building with its sole aim of profit for the builders. In short, he makes abundantly clear why “housing is the stepchild of industrial civilization.”

Unlike many contemporary discussions of the housing problem, Mr. Lasch's work does far more than describe bottlenecks. He relates housing, as it must be related, to the broader problem of planning our cities for the people who live in them. “Neighborhoods,” as he says, “have seldom been built for people,” primarily because the power to determine how we live has traditionally remained in private hands far more interested in profit than in sound planning. Viewed in this light it is obvious that a program designed to provide decent housing for all must rest upon intelligent government action. Public land acquisition, zoning, real estate taxation, urban planning and redevelopment, and a comprehensive scheme of assistance and incentives for building are thus inseparable from the housing problem itself. In Mr. Lasch's words, “Our cities stand as memorials to the private planning of irresponsible profit-seekers. If they are to be made better organs of democratic life, they must be planned in the future by those who derive authority from the people and answer to the community as a whole.”

For the lawyer there are many legal obstacles to ponder. The present-day mortgage is not well suited to the needs of home-financing. Procedures for reclaiming tax delinquent land are inadequate. Slum land can be acquired by public authorities only at exorbitant prices because accepted notions of due process protect the owner in his inflated values. The real estate tax system impedes residential construction. Building codes and zoning ordinances require drastic revision and overhaul. Here is a real opportunity for constructive legal work.

The ground covered so clearly by Mr. Lasch is, of course, well known to specialists in the field. The vast and rapidly-growing literature in housing is some evidence, at least, that “a man's house has now become a matter of public concern.” But it has remained for Mr. Lasch to make this material readable and the problems understandable. His remarkably clear statement of the need for public housing and the manner in which it is financed and administered would, by itself, make the work notable.

Sooner or later these facts and the conclusions they lead to will be common knowledge. Armed with this knowledge people will demand and get the constructive action which special interests and their propaganda now prevent. *Breaking the Building Blockade* is a real contribution to that essential understanding.

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Chief Justice Stone and the Supreme Court. By Samuel J. Konefsky. New York: The Macmillan Company, 1946. Pp. xxvi, 290. \$3.00.

Mr. Konefsky states that the main purpose of his book is to present "Mr. Stone's conception of the Supreme Court's special function in interpreting the Constitution."¹ Its subsidiary purpose is to present the "larger trends of constitutional development as well as the conditions which gave rise to the controversies."² The book, save for the interpolation of one or two later opinions, covers the period down to June, 1943. It necessarily omits much material of value in the late Chief Justice's opinions during his last three terms of Court. This is, of course, a hazard involved in writing a book upon the views of a judge in active service.

The author has chosen for study six topics of constitutional law: intergovernmental tax immunity, state power as affected by the commerce clause, federal power to spend and to regulate industry, the administrative process, state power to regulate industry as limited by the Fourteenth Amendment, and civil liberties. The background of each topic is given, followed by a case by case discussion of the opinions of Justice Stone as to both their substance and their bearing on the author's main theme. The book closes with a chapter summarizing Justice Stone's "Enlightened View of the Judicial Function."³

Mr. Konefsky's principal conclusions as to the judicial methods of Justice Stone are these: He displayed an unwillingness to permit decision to turn on "the use of legalistic formulas and labels."⁴ Cases should be decided "not on the basis of legal logic but on actual experience."⁵ In economic matters, the courts should not "sit in judgment on the wisdom of legislative action,"⁶ and should allow "wide latitude . . . for the legislative appraisal of conditions and for the legislative choice of methods."⁷ But in matters involving civil liberties or the protection of the political processes of government, "he is prepared to weigh the legislative restriction in the light of possible alternatives and to substitute the Court's view of what is necessary or appropriate in the given circumstances for that of the legislature."⁸

These conclusions seem essentially correct. Justice Stone rejected the meaningless labels which often confused constitutional rules, e.g., permitting constitutionality of a state statute to turn upon whether it imposed a "direct" or an "indirect" burden on interstate commerce. He insisted rather that the decision in each case should be guided by the practical necessities which called the constitutional principle into play, and that in each case the factual setting of the concrete case should be carefully explored.

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¹ P. vii.

³ P. 255.

² Ibid.

⁴ P. 260.

⁵ P. 261.

⁶ P. 264, quoting from *United States v. Butler*, 297 U.S. 1, 78, 87 (1936).

⁷ P. 263.

⁸ P. 270.