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Books Reviewed

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BOOKS REVIEWED

POLITICAL THEORY, THE FOUNDATION OF TWENTIETH-CENTURY THOUGHT.
By Arnold Brecht. Princeton: Princeton University Press, 1959. Pp.
xviii, 603. \$12.00.

Many intellectual currents have coalesced in Professor Brecht's volume but the moral conflicts of the present era provide its special impetus. Nineteenth century political thought had worked out a set of propositions as the basis of governmental action which appeared morally persuasive. Parallel with this development was the faith in the possibility of a scientific ethic grounded on the doctrine of evolution or established by canons drawn from physics. In large areas of the West after World War I these political postulates were denied or reversed, and science, as currently understood, found itself powerless to pronounce any moral judgment on actions which had widespread human suffering as their necessary concomitant.

Brecht sees the present critical state of affairs not in terms of democracy as against the forms of totalitarianism, for there appears to him to be no scientifically valid standard by which to measure the claims of either side. He holds the real crisis to lie in the fact that scientific theory itself is of the view that the problem of value is beyond the province of empirical science. Brecht's volume is devoted to an examination of this contention, which he accepts as valid, and to an attempt to salvage some ethical propositions from the ensuing wreckage. It is the ablest and most extensive study of the problem we now possess from the point of view from which it is written. Not the least of its merits is Brecht's scrupulous effort to answer the possible objections to his position.

At the basis of Brecht's study is the legacy of skepticism bequeathed us by Hume. The notion that the mind knows only its own impressions, and that it cannot establish real connections in the external world, amounts, if true, to a denial of the possibility of knowledge in any field, including science. Hume's arguments have been circumvented, but it is doubtful that they have ever been satisfactorily answered. The present uncertainties in epistemological analysis and the emphasis upon its problems in contemporary thought are testimony to the vitality of Hume's position. In philosophy, Hume's point has been avoided by arguing that ontology is prior to epistemology on the ground that how we know a particular object does not determine any of the characteristics of that object, and that therefore the knowledge process need not be considered in accounting for the nature of things. In other words, the nature of the world determines the facts of knowing, and not conversely. In science the problem simply has been ignored. Investigations in the physical sciences have proceeded from one success to another, and their achievements have resulted in a relatively

coherent system of knowledge generally accepted as cogent. As a result, the techniques and procedures of science have become the object of intensive study. It is possible, and Brecht so claims with certain immaterial reservations, that scientific method is the sole avenue open to man by the aid of which he is able to reach a body of systematized knowledge commanding general assent. This position is achieved not by refuting Hume and the modern extensions of his arguments, but by ignoring them. Scientific method as it is expounded today displays a prudent skepticism with respect to its techniques in the sense that it attempts a greater and greater rigorous clarity in the meaning it assigns to its ideas and procedures. So far it has been unable to answer Hume's arguments that the basic principles of science cannot be established by the method it propounds, but it refuses to be paralyzed by this impediment.

Scientific method, whether in the empirical form presented by Brecht or in any other, rests ultimately, from the point of view of a thoroughgoing skepticism, on foundations as uncertain as those of other fields of inquiry. So long as its first principles, e.g., causality, induction, systematic connectedness, fail to be established as absolute truths the inferences in which they are employed remain questionable. In this respect, scientific method is precisely in the same condition as any other effort on the part of man to understand the nature of the world which does not rest upon allegedly self-warranting forms of knowledge. In both philosophy and science we are always driven back, not only by the demands of skepticism, but by the desire to know the truth about the nature of things to an independent principle the validity of which cannot be established, since the argument must employ the principle itself and hence would be circular.

In Aristotle's view, the assertion that contradiction and being are incompatible was not only such a principle, it was the ultimate principle in which all regress must end if inquiry is to advance at all. Although scientific method, if it is genuinely self-critical, must terminate its analysis of its own foundations in the acceptance of this principle, it nevertheless possesses an apparent advantage not shared by philosophy and other comparable inquiries. In the physical, chemical, and biological sciences it has succeeded in establishing a more extensive and more accurate body of knowledge than can be pointed to by other modes of exploration. This special characteristic of scientific method has given it an enormous prestige culminating in Brecht's view that it is the exclusive method.

Brecht undertakes a detailed review of the necessary elements in scientific method, but what gives it the status of exclusiveness, in his view, is the fact that it can transmit knowledge *qua* knowledge from person to person. What scientific method actually transmits as knowledge is not the conclusions which have been reached but the evidence for them. Now there is no doubt that scientific knowledge is transmissible knowledge and that that is one of its merits. Other kinds of knowledge, in Brecht's view, are communicable although they are not based on observation and experiment. However, they are not transmissible, i.e., subject to "scientific verifiability." Brecht admits the case of arithmetic and geometry when, but only when, they are strictly analytic. Notwithstanding the

fact that the ultimate principles of mathematics are without empirical justification except on the hypothesis that the laws of thought in some sense are part of the nature of things Brecht must perforce make this concession. Otherwise science as he conceives it is impossible. Science, even if held to be rigorously empirical, owes a considerable part of its development to pure mathematics; that mathematics is empirically independent of the world but its results are applicable to it. But the precise point in Brecht's argument is that by transmissible knowledge he means knowledge that can be empirically tested. This seems an unnecessarily self-limiting conception. The meaning of the assertion that contradiction and being are incompatible can be communicated, but it cannot be subjected to empirical verification. However, the logical consequences which flow from its denial would leave Brecht without any world at all in which science could operate. Similarly, Newton's first law of motion states that all bodies continue in their state of rest or of uniform motion in a right line unless compelled to change by impressed forces. That again is an assertion the meaning of which can be communicated. Taken by itself, however, it cannot be empirically verified inasmuch as there are no bodies in the Newtonian universe free of impressed forces. But to deny the status of knowledge in the sense of valid hypotheses to the Aristotelian and Newtonian propositions appears arbitrary.

Brecht's study is thus largely empirical in its orientation and method. It is generous, thoroughly considered and makes full allowance for the place of reason in scientific undertakings. Inasmuch as he admits the validity of logical reasoning, he would appear to accept consistency as the test of validity in that and allied fields. But in the field of applied science his measure is correspondence. His interest is in the type of assertion that can be tested by observation and experiment. He would not in the least deny to others the opportunity to pursue inquiries into the nature of things by any other means that appeal to them. It is simply that their activities and conclusions do not move him. Brecht has the Western belief in the intelligibility of the world. He has also a faith that the power of logical reasoning and the methods of applied science can be utilized to secure assent from other minds provided they are open. But to world views which deny the world's intelligibility the accounts by physical science of the nature of things have no significance whatever. To a Zen Buddhist the law of noncontradiction, on which the whole of our philosophical and scientific investigations is predicated, is not only meaningless but false. There is here a dichotomy in the way of looking at things which defies explanation. Mill's observation that the difference between minds lay in the ability to appraise evidence does not meet the point, for what is evidence to Dr. Brecht is not evidence, for example, to Dr. Suzuki. Conversely, however, while the idealist will accept the conclusions of physical science, the empiricist will find nothing of substance in those of the idealist. Nor can this state of affairs be accounted for on the ground that particular world views promote the happiness of the individuals who hold them. By their own accounts the skeptics of the ancient world were supremely happy men, and this happiness was a direct result of their denial of the possibility of all knowledge. But as Hegel was the first to point out, modern

skepticism, unlike its ancient counterpart, has brought to its holders a considerable degree of unhappiness.

Brecht's own discontent is brought about by the inability of scientific method to circumvent the force of the logical principle which holds that ethical conclusions cannot be deduced from nonethical premises. One effect of this principle is that scientific method as empirically conceived is foreclosed from making absolute statements with respect to ultimate values. We cannot prove by scientific method, for example, that happiness or equality or other proposed ultimate values are absolute standards. Any attempt to do so finds us driven in the end beyond science to religious, metaphysical or other nonempirical sources. The attempt of American pragmatism to meet this problem through a consideration of the consequences of different hypotheses merely involves, as Brecht shows, a postponement of the issue. If raising the interest rate increases unemployment, or if not raising it cheapens the value of money, the government must still determine which is the greater evil, increased unemployment or inflation. Hume, who was explicitly aware of what Brecht calls the unbridgeable gulf between the Is and the Ought, treated the problem with a measure of playfulness. But in the twentieth century the problem has become a serious one. Totalitarianism in its various forms has vigorously collided with science conceived as an empirical system. Thinkers who are committed to this view of science have found themselves helpless to appraise in ultimate ethical terms any of the manifestations of totalitarianism. They find themselves in the position of being trapped by the limitations of empiricism. They cannot say, except on the ground of personal preference and without doing violence to their own dogmas, whether even the utmost excesses of totalitarianism are good or bad.

A valuable portion of Brecht's volume is devoted to the intellectual history of this impasse and the various attempts which have been made to meet it at the empirical level. None of them, as he shows, has been successful. In an indeterminate system such as ethics the gulf between the existential and the normative is unbridgeable. If ethics became as determinate as mathematics the problem would disappear.

But the chances of the formulation of a determinate system of ethics are remote. It involves the discovery of an ultimate explanatory principle which will account for both existential facts and the facts of value. There is no *a priori* ground why this problem is not a legitimate one. What Brecht insists upon is that we should not attempt to derive norms from existential propositions, and that empiricism cannot subject norms to the tests applied in the physical sciences. The first observation is legitimate. The second is true but irrelevant. Since scientific method as propounded by Brecht is purportedly derived from a study of the practices of the physical sciences, it would be a coincidence if it were applicable to the study of normative science. However, it is also true that we may one day have a generalized scientific method applicable to both fields. In any case, there appears no element in the nature of things which would preclude the discovery of a principle which would account for both the existential and the normative. To assume otherwise is to postu-

late a dichotomy in the world for which there is no evidence. Physics so far as we know at present is highly successful in accounting for the nature of existential facts. Normative science is far behind in its field. But each subject gives a partial account of the world. A more general subject could treat both fields as instances of a wider principle.

The various attempts in the past to develop such a principle have not been carried far enough to be of use, but they show that at the least a start is possible. Plato's doctrine of the Good was precisely an effort to meet this problem. Spinoza's principle of Nature as a fully intelligible, infinite, and self-contained causal system is another. The history of speculation exhibits a number of instances of this sort, but they have never been followed to any acceptable conclusion. The insights of a Newton or a Planck can be developed by men of lesser capabilities, but philosophic insights require, for their elaboration, the possession of abilities at least on the level of those who first discovered them. The study of the physical world can also be carried on as a common enterprise, but the domain of philosophic thought demands a different type of intelligence. It is perhaps for this reason that metaphysics as a systematic discipline appeared comparatively late in intellectual history.

In the absence of any real effort today to follow Greek thought in the study of norms which are connected with a prior general principle an alternative approach, also Greek in origin, is to study them as general rules which admit exceptions and which are subject to correction. At bottom is the conception of norms accumulated from human thought and experience and clarified by the means at our disposal. It is the Aristotelian approach which holds ethics to be the application of wisdom to the art of life. It unequivocally forsakes certainty. But it recognizes the indubitable complexity and difficulty of the ethical subject matter, and by attacking it piecemeal it may in the end, as has been the case with science, fall into a pattern. As a method it is as warranted as those of the great deductive philosophical systems. It is the effort to see the principle in the relevant particulars. It is not pragmatic in the sense that the norms are to be measured by their consequences. The norms themselves, although subject to extensive testing are, as norms, productive agencies in the promotion of the good life as a systematic whole. They are motivating standards which direct the activities of a people.

It is on a basis similar to this that Brecht endeavors to extricate contemporary morals from its present predicament. He terms his procedure a combination of phenomenology and comparative empiricism. By this he means justice conceived as a way of feeling, thinking, and judging the results which are checked by comparison. This method has yielded him what he terms five "universal postulates of justice": (1) Justice demands that it be in conformity with objective truth, and that the judging person must honestly believe that the relevant statements are true. (2) It is unjust to select arbitrarily different systems of values in considering one case and another. (3) It is unjust to discriminate arbitrarily among equal cases. (4) It is unjust to restrict freedom in contradiction to the accepted system. (5) It is unjust to inflict punishment or moral reproach for nonfulfillment of a law or command which is impossible of fulfillment. Brecht

holds that justice demands conformity with all five postulates. He holds further that they represent universal and invariant elements in the human way of thinking and feeling about ethical values.

Clearly the failure to follow these postulates in applicable situations would approach the limits of ethical irresponsibility. That there are numerous examples in history, and no doubt even at the present day, of the transgression of all five postulates is not an argument against their validity. It is of the nature of norms as distinguished from physical laws that they can be violated. The pertinent question with respect to the postulates is: To what extent do they possess significance in the conduct of human affairs?

Brecht correctly observes that the truth postulate and the postulate which demands respect for the necessities of nature are independent of any particular system of values. The quest for truth is the universal element in all inquiry, including political and legal theory. The persistent question is always: Is this the case? In the natural and mathematical sciences the effort to answer this question is without limit. It is the most difficult question, as the history of science and of philosophy both show, that a subject can ask itself, and one of the aims of scientific method is to establish elaborate safeguards to insure so far as possible that the question is properly answered. It has taken twenty-five hundred years to pass from the notion that the world is made of earth, air, fire, and water to modern atomic theory, and the end is far distant. Normative theory similarly knows no limits to the pursuit of its inquiries. But in the translation of its conclusions into material application it encounters conditions which it has so far been powerless to overcome. It is the ideal of the law that the truth shall prevail, i.e., that judgment shall be rendered on the basis of all the relevant facts. But when the facts are in dispute, as they are in most cases, the solution of the common law has been to refer them to a jury for decision. This procedure satisfies the sense of justice of the community since it helps to minimize judicial arbitrariness, but it is no guarantee that the facts have been ascertained. When the testimony is hopelessly in conflict and it is apparent that both sides are mistaken or lying, the jury is nevertheless under a duty to bring in a verdict. The principle that the truth shall be ascertained is in direct conflict with the desirable social requirement that litigation be brought to an end. Again, most divorce proceedings today are collusive in nature; but inasmuch as that is the one fact which would terminate the proceedings if it appeared on the record, the parties and their counsel resort to every means to prevent its disclosure. If we take "truth" to mean merely the ascertainment of the facts, which is the sense in which Brecht apparently here takes it, we can admit the legitimacy of the ideal but not that it is necessarily determinative of material issues.

Brecht puts the case of a cannibal tribe whose standards permit the eating of its enemies. The postulate of factual truth does not comfort an enemy who finds himself being prepared for the roasting. Brecht observes that, alas, he is in fact a member of the enemy tribe. Brecht is thus forced to extend the principle of factual truthfulness since it would offer no protection against groups which practice racial or religious discrimination. Thus he postulates that evaluations must also be truthful, "that is, they must be truly in line with convictions as to

what is valuable, in order to support the sense of justice in discriminatory statements or actions." ¹ It is not apparent how this helps his instance of the cannibals. The testimony is abundant that no embarrassment or feeling of shame accompanies the practice of cannibalism, but that on the contrary, the attempt is made to justify it on the grounds of self-protection and the securing of an adequate or superior food supply.

Brecht lays the greatest stress upon his truth postulate but he explains fully the meaning of the remaining four. They all need, however, to be worked out in much greater detail in their material application. Notwithstanding the apparent self-evidence of their validity they all come in conflict with competing principles when extended to the management of human affairs. Even the postulate that it is unjust to reproach a man morally for nonfulfillment of a command which is impossible of fulfillment encounters difficulties. A battalion is ordered to take a hill which the officers and men know is incapable of capture; further they know that the resulting action can have no conceivable bearing on the outcome of the war. It is impossible to doubt that the battalion would be open to the severest moral and other reproaches if it did not attempt to carry out the order even at the cost of all lives. The history of ethics is a constant succession of efforts at the formulation of normative invariants of apparent validity on their face but which are inoperative in a significant sense when confronted with the circumstances and complexities of human life. There are two possible views here. We can continue the search for normative invariants with full recognition of the immense labor involved in stating them in a form sufficiently adequate to meet the multitudinous components of human behavior. So far as this approach is concerned it is sufficient to remark that its impossibility of accomplishment has not been shown. We can also take the alternative view that normative invariants cannot be formulated since necessity does not operate in the field of conduct. This was the view of Aristotle, but here again the proposition remains undemonstrated. It leads to the position that the most we can hope to achieve is a collection of general rules with due allowances always for exceptions. Neither approach comes close to presenting us with a body of materials on which studies could be based or with any conclusions of importance which can withstand critical appraisal.

Other matters are discussed with more or less elaborateness in Brecht's volume, and the above discussion is concerned only with the essence of his argument. The book is a cautious, extensive study of one of the most baffling problems bequeathed us by Greek thought. Brecht has approached the subject with methods which are unduly self-limiting, but he has nevertheless managed to make many valuable observations.

HUNTINGTON CAIRNS

1. BRECHT, *POLITICAL THEORY, THE FOUNDATION OF TWENTIETH-CENTURY THOUGHT* 410.

THEME FOR REASON. By James Ward Smith. Princeton: Princeton University Press, 1957. Pp. 215. \$4.00.

There is a well-known passage of the *Nicomachean Ethics* that is so pertinent to the tone and thesis of the book here under review that it is worthwhile to quote it at some length. Aristotle is discussing the purpose of the moral and political sciences, the modes of treatment that are appropriate to them, and the sorts of results that we can reasonably expect from them. He summarizes his views, with particular reference to the last point, in this way:

Our discussion will be adequate if it has as much clearness as the subject matter admits of, for precision is not to be sought for alike in all discussions, any more than in all the products of the crafts. Now fine and just actions, which political science investigates, admit of much variety and fluctuation of opinion, so that they may be thought to exist only by convention, and not by nature. . . . We must be content, then, in speaking of such subjects and with such premises to indicate the truth roughly and in outline, and in speaking about things which are only for the most part true and with premises of the same kind to reach conclusions that are no better. In the same spirit, therefore, should each type of statement be *received*; for it is the mark of an educated man to look for precision in each class of things just so far as the nature of the subject admits; it is evidently equally foolish to accept probable reasoning from a mathematician and to demand from a rhetorician scientific proofs.¹

Within the framework of meanings established by this passage, I think Professor Smith would argue that there are very few "educated men" left in the world today. It is exactly the purpose of his book to study this dwindling species more closely, to analyze its essential features, and to explore the ways in which it can be rescued from a threatened extinction.

In Smith's own language, the principal task to which he addresses himself is that of "redefining the demands of reason."² He insists that what is ultimately and radically wrong with the contemporary intellectual atmosphere is a pervasive misunderstanding of reason as an instrument and of reasoning as an enterprise. Because of this, we vacillate between a shallow arrogance and a morbid defeatism; we neglect problems that are both soluble and of vital urgency, while we devote ourselves fiercely to others that are insoluble and artificial; and we are impatient of any challenge to certain very dubious assumptions that we regard as self-evident truths, while we practice the coldest skepticism toward facts and principles that have every substantiation save that of a "proof" that is impossible in theory and unnecessary in practice. Most especially, we have badly misconceived both the functions and the limits of rational inquiry. As a consequence, we have far too much faith in certain restricted employments of reason that we have been persuaded are sound and legitimate; and we have far too little faith in other of its employments that suffer from no inherent fault save that of

1. ARISTOTLE, *op. cit.* 1094b 12-28.

2. SMITH, *THEME FOR REASON* 30.

not being of the currently approved types. In a word, intellectual complacency is our form of the sin of sloth, while incredulity is our form of pride.

The course followed by Smith in his projected rehabilitation of reason is difficult to summarize. Two factors create this difficulty. In the first place, the book brings within its ambit a wide and varied subject matter. There are full and detailed discussions of the central problem as it occurs in the philosophy of science, in political philosophy, and in ethics; and these analyses entail considerable excursions into the fields of epistemology, metaphysics, logic, and linguistics. In the second place, the argument as a whole, and into whatever context it penetrates, pursues both a critical and a constructive course. The author is sometimes intent on exposing the inadequacies of current dogmas and isolating the neglected problems that are responsible for these inadequacies. At other times he is suggesting solutions to these problems or proposing lines of inquiry. So the pattern of the book is complex. In this review, I shall first present its major tenets and conclusions quite briefly, and shall then concentrate on its treatment of the problem of political philosophy.

The goal that Smith sets himself is the ambitious one of re-examining the powers and limits of reason, of exposing the general principles that govern its exercise in all of its manifestations, and of defining the various techniques that are appropriate to its specific undertakings. He feels that philosophical opinion is confused on these matters; and, what is far worse, that philosophical attitudes are partisan and contumacious. Given the widespread fruitlessness of discussions of these questions, he opines that the trouble most probably lies in just those matters on which the disputants are agreed. That is, he postulates an inadequacy in the assumptions that are held in common by all parties. These assumptions are unchallenged and even unconscious. They are the uncriticized commitments that make possible a seemingly systematic skepticism. So the first task of inquiry is to ferret out these "common assumptions which underlie our differences" and "which we have taken for granted and failed to discuss."³

Three such assumptions, so closely related as to form a single logical progression, are singled out as especially pervasive and pernicious. There is, first, the "uncompromising distinction" between analysis on the one hand, and, on the other, what is variously denominated "speculative philosophy," "metaphysics," or the "grand tradition." The uncompromising separation of these techniques needlessly impoverishes each of them: the first deprives itself of vital sustenance in the form of important problems to be attacked, while the second loses the benefit of powerful weapons of inquiry. Secondly, there is the settled conviction that the only two ways in which we can talk sense are by logical tautologies and empirically verifiable statements. This drastically limits the reach of discourse, and makes many questions inaccessible to responsible inquiry. Finally, and as the culmination of this train of thought, there is the

tendency to conceive of the demands of rationality on inadequate standard models. . . . We persist in operating in terms of two ideal models of rationality: on the one hand, the model of logico-mathematical deduction;

3. *Id.* at 1.

on the other, the model of piecemeal inductive engineering. We feel that we are being rational only to the extent that we confine ourselves to the enunciation either of demonstrated theorems within deductive systems or of empirical hypotheses which sheer weight of evidence will tend to confirm or confute.⁴

Smith insists that the primary intellectual need of the present is to correct these assumptions. Their presence leads us to dismiss as meaningless many questions that are vital to our concerns; and it leads to a distorted treatment of still more questions. By so narrowly defining the reach of reason, we invite irrationalism. Under this intellectual regime, opinions on many matters are arbitrarily declared to be incapable of rational justification: if we cannot support our beliefs by deductive proof or inductive experiment, then they are held to be grounded merely on emotion or convention. The necessary corrective to this situation is a thorough reconsideration of what it means to be rational, and what is required for a belief to be reasonable. The author's "central task," as he defines it, is precisely that of "clarifying the concept of responsible justification where standard models are inadequate."⁵

All of these contentions are supported by a lengthy and detailed argument that has a persuasive impact. Smith offers strong support to the now growing conviction that contemporary philosophical dogmas have put thought into leading-strings that are intolerably tight: his critical attacks on both "positivism" and "a priorism" are acute in their insights and fully developed in their sweep. The gist of this argument is to the effect that there are many cases in which our thinking is perfectly serious and responsible, and its conclusions justified and secure, and yet in which our inquiry cannot be forced into the rigid model of either mathematico-logical proof or the controlled experiment. These models are inadequate because they are too confining and exclusive. So we require broader and more flexible modes of inquiry, based on norms that will be sympathetic to the approximations and probabilities that are the best we can hope for in many of life's most important contexts.

This constructive effort is based on the principle of fallibilism, which requires "that we never block the road to inquiry by assuming that we cannot be wrong."⁶ Now, the author contends, our addiction to the rational models of proof and experimentation is a flagrant violation of this principle, since it asserts categorically that reasoning in accord with these models must be valid and that all other types of reasoning are illicit: in short, we assert that we cannot be wrong in our selection and rejection of techniques of inquiry. So the principle of fallibilism justifies our search for other forms and criteria of reasoning. But this principle is not by itself sufficient to indicate what these are: it must be filled out with further inferences. This positive effort to redefine the demands of rationality — the conditions of reasonableness — is not mounted with the same care and detail as the attack on current concepts, and so is not

4. *Id.* at 6.

5. *Id.* at 7.

6. *Id.* at 105.

equally satisfactory. One gets somewhat the impression that this is a task that is being left, quite legitimately, for later treatment.

Instead of trying to summarize these tentative and rather incomplete epistemological and metaphysical suggestions, I will turn now to the political phase of the argument, where the occurrence of these problems in that limited context is dealt with more fully.

The central problem of political philosophy is a specification of the general problem already considered. It is this: "How are we to justify the political proposals we wish to make?"⁷ We face situations that challenge us to reach decisions and formulate programs. How are we to guarantee these against error and recommend them for acceptance by others? The attempt to answer this question, and to justify our policies, has been vitiated by the same restrictive doctrines as those discussed above.

There are two standard ways in which we have tried to conceive of justification in political theory. On the one hand, we have tried to show that our proposals 'are logically entailed by,' 'can be deduced from' elaborate metaphysical theories concerning the nature of the world and the nature of man. On the other hand, we have tried to show that our proposals can be somehow supported by 'scientific induction,' 'experimentalism,' or 'social engineering.' These standard ways of approaching the problems of political theory are in constant conflict.⁸

These schools of thought, otherwise so different, employ the same technique in supporting their positions: each seeks to discredit the other by the familiar device of *reductio ad absurdum*, and then claims that it represents the only available alternative: to paraphrase Louis XIV, each calmly proclaims, *sans moi, le déluge*. Smith subjects the doctrines and claims of both schools to a close analysis, and argues cogently that neither succeeds in establishing its case. Further, he argues that the basic tenets of a political theory cannot be justified in either of these ways: they cannot be shown to be true either by logical proof or by empirical observation. This is not a novel conclusion: it has been frequently used as the justification for political irrationalism and absolutism. But the present author puts it to quite another use. Since the "standard models" of logical entailment and social engineering are inadequate, and since irrationalism is unacceptable in theory and vicious in practice, then we have no recourse but to seek some other way of rationally justifying our political beliefs and programs.

The solution here proposed to this dilemma is radical and far-reaching, at least at first blush and under one obvious interpretation; and this is a point to which I shall return later. It consists in the thesis that "political proposals are not propositions but recommendations, demands, admonitions—in a word, advice."⁹ This argument holds that political principles are not empirical

7. *Id.* at 14.

8. *Ibid.*

9. *Id.* at 48.

hypotheses, to be tested by appeal to the evidence; nor are they logical tautologies, to be proved by deduction from more basic premises. This being the case, it is absurd to ask whether any political principle — such as “All men are created equal” — is or is not a true proposition. For “in its important uses it simply is not a proposition: it is a recommendation to act in one way rather than another.”¹⁰ Hence, the question that is significant with regard to such principles is this: “under what conditions do they constitute sound advice?”¹¹ Advice, and especially the sort of advice that is embodied in political principles, tends to become overgeneralized: we state our political beliefs as though they were ultimate and universal, appropriate to all societies at all times and under all circumstances. Our most serious political mistakes result from our taking sharp but limited insights and treating them as though they were finished visions. The cure for this is to recognize that political principles are recommendations concerning the ends and the means of group action, and that the vital task is to determine as precisely as possible the contexts and the conditions in which they are appropriate. In some areas of group life, and in some situations, it is proper that we treat all men as equal; in others, it is absurd and even disastrous. What is politically important is to be able to discriminate among these cases.

But this, as important as it is, still is not enough. For, as the author recognizes, we need categoricalals in the political sphere as in others. “Unless there is something for which we stand *in any case*, we stand, in the last analysis, for nothing.”¹² So “there are points at which we must commit ourselves unconditionally. *Some* advice we take to be always good advice; which is to say that we take it to be both general and binding.”¹³ When, for instance, we espouse and recommend individualism as against collectivism, parliamentarism as against absolutism, Democracy as against Communism or Fascism, we speak in absolute terms. And the crucial problem of political philosophy is precisely that of “isolating those basic commitments apart from which our ways of behaving as a group and our common purposes in action make no sense.”¹⁴

Smith bases his solution to this problem upon the general principles of fallibilism. This, it will be remembered, “requires that we never block the road to inquiry by assuming that we cannot be wrong.” In the political context in particular, and in others also, this principle means that “nothing is more categorical than the demand that we face our own limitations.”¹⁵ This in turn, in accord with the whole preceding argument, means that we must give up the attempt to solve our political problems by “proving” any set of doctrines by either of the standard models of deduction or experimentation: “proof” is politically irrelevant. This, finally, means that the essence of a sound political philosophy lies in finding some alternative method of justifying our political proposals. That political system will be best whose technique for making deci-

10. *Id.* at 54.

11. *Ibid.*

12. *Id.* at 57.

13. *Ibid.*

14. *Id.* at 59.

15. *Id.* at 108.

sions is most in accord with the principle of fallibilism. It is the culmination of this argument that this best technique is that of democracy. On this ground, as the author acknowledges, "the justification of democracy is methodological."¹⁶ "My thesis will be that the 'foundation' of democratic political philosophy consists in the rejection of the concept of justification by proof."¹⁷ Democracy, then, is the soundest political philosophy for the reason that it embodies the most flexible and corrigible technique for making political decisions.

This claim itself could be fully justified only by exhaustive consideration of all the principles embedded in the "democratic approach." Such an inquiry is evidently beyond the scope of the present book, and Smith limits himself to a discussion of five of the more important of these "methodological principles." Those chosen are: 1) separation of church and state; 2) separation of science and state; 3) checks and balances; 4) the poll; 5) equality and freedom. The author contends that these principles constitute the basic procedural categoricals of political thought and practice because they best exemplify the principle of fallibilism: they deny any and all substantive categoricals; they prevent any institution or group from enforcing its opinions; they promote tolerance and respect for divergent views; they allow for the continual correction of decisions. In sum, these methodological categoricals militate against any doctrinal categoricals becoming entrenched.

I have chosen rather to expound the argument of this book than to appraise it. I have done this on the ground that the former task has a prior claim on the reviewer where limitations of space and time prevent adequate attention to both. But any work that enters so boldly into a field rife with polemic requires some assessment of its contribution.

For this purpose, it will be well to stress again the earlier reference to the two strands, one critical and the other constructive, that run through this work. The former of these occupies by far the larger portion of the book, in sheerly quantitative terms; and it seems clear that it has more closely and continuously occupied the author's attention, for it is worked out with more care and completeness. This part of the argument merits very high praise. The diagnosis of the contemporary situation in philosophy; the analyses and evaluations of the competing schools of thought; the plea for a greater sensitivity to the range of phenomena that thought must consider; the argument for a reconciliation of views that, it is urged, are truly complementary and that appear contradictory only under mutual goading; the illumination of the present scene by constant shifts to historical perspective — all of these matters are treated with great skill and tact. The tone is usually appreciative, moderate, conciliatory, and perceptive. In all of the contexts that it touches — political, ethical, metaphysical, and methodological — it is an excellent critique.

The constructive contribution of the book is more difficult to assess, largely because the proposals made here are admittedly incomplete. I shall confine my

16. *Id.* at 109.

17. *Id.* at 110.

discussion to the treatment of the political problem, as this has been most fully expounded above; and this restriction should not distort too greatly, because the solutions proposed in ethics and in general philosophy are closely analogous to this.

The major point at which the present reviewer feels grave reservations concerns the author's sharp distinction between "propositions" and "recommendations," between "true statements" and "sound advice." This difference is insisted upon repeatedly, and it emerges as a radical dichotomy, whether or not this be the author's real intention. The following passage typifies this treatment: "Political theory bulges at the seams with arguments about the truth or falsity of bloated general propositions where in fact it should be examining the conditions under which one kind of advice is appropriate rather than another."¹⁸

Now I quite agree with the author that a political philosophy—or theory or system—is a set of proposals for action. Furthermore, its orientation is largely determined by the actual conditions and the prevalent doctrines that it combats and seeks to correct. Hence a political system—like a medical regimen—is highly apt to embody no more than a partial view of the "good" and one that is only temporarily effective. And we do well to bear these points in mind.

But it is a long step from this acknowledgment to the notion that political principles are not propositions at all, and so have no knowledge content and no truth value. The point at issue here is brought out sharply in the sentence just quoted. For it would seem to me that the question of the "conditions" that render advice appropriate or not is identical with the question of the precise reach and relevance—i.e., the "truth"—of the general principles enunciated in the advice under consideration. How would he determine the soundness and effectiveness of recommendations save by discovering whether they accord with the human, social, and physical circumstances in which they are to be applied? It appears at least possible that Smith has here been led too far by his quite proper concern to save political principles from the iron grip of "standard models." Would it not be better to extend and refine our "models" than surrender them: that is, to insist that metaphysical, ethical, and political principles are arrived at by the same scrupulous application of the same combination of techniques that are employed in all disciplines, while at the same time to admit that the substantiation of these principles, given the phenomena with which they deal, cannot reach to proof in the current use of that term?

Closely associated with this point is the argument, following from the principle of fallibilism, that the basic categoricals of both political and moral philosophy are methodological rather than substantive. This means that the foundation of a sound political doctrine consists exclusively in the techniques by which decisions are reached. In ethical theory, it means that the cardinal virtues are those of sympathy and toleration for the varied ways of seeking good that different men follow. This is admirable as far as it goes, but more than this is required. For unless we are prepared to grant the doctrine of equality in its most sweeping sense, the political and moral beliefs of men need to be informed by substantive doctrines that have for them the force of dogma,

18. *Id.* at 54.

and that have been arrived at by expert investigation of matters of both fact and value. This point has been urged with great acumen and thoroughness by De Jouvenel in his recent book, *Sovereignty*, where he argues that our political life has been chiefly vitiated by the fact that "the idea of the legitimate origin of Power has suppressed and driven out its natural fellow, that of the legitimate use of Power."¹⁹

A final light might be cast on this whole problem if we examine its equivalent occurrence in the field of legal thought. While I would not want to press the analogy too hard, I think there is at least a working correspondence between Smith's deductive approach and the school of legal idealism, and between his experimental approach and the school of legal realism. Certainly the idealists tend to derive their basic jural principles from more primitive metaphysical and moral propositions as embodied in natural law, and to view law as an instrument of pre-established values. The realists, on the other hand, tend to derive their working purposes and rules from the play of precedent social forces, and to view law as an agent of actual social interests. Now, I think it is fair to say that both idealism and realism are essentially substantive doctrines: they both regard law as a means to extralegal human and social ends, and they are deeply concerned that the content and administration of law reflect and serve these more basic values. So they both subject law to extralegal analysis and criticism; and they both admit that law, while unquestionably formally valid, may not be what it ought to be—though they probably mean quite different things by this "ought."²⁰ As these doctrines lose their persuasive power, and the conviction grows that the essence of law is strictly procedural, legal positivism becomes the dominant school of thought. This happens because, and to the extent that, it is felt that there is no reputable technique for discovering the correct substantive content of law save from within the legal process itself. This has happened in fact to an appreciable extent in law, with deplorable repercussions. If it happens in politics and morals, it will mean that these fields will be cut off from the fruitful intercourse they so badly need with philosophical and scientific disciplines. The crux of my reservation to this part of Smith's position lies in the fact that I fear this may be the inadvertent outcome of his argument.

But I would not want to stress these critical comments, nor especially to assign honor of place to them. The point at issue here may be largely verbal, depending on how radically the distinction is drawn between "propositions" and "recommendations." And there is abundant evidence that Smith is acutely aware that our political and moral advice needs to be informed by substantive contributions from both science and philosophy: he stresses that we cannot have too much of the knowledge and understanding they supply, and he is afraid only that they may come to exercise a tyranny over thought. Moreover, since these constructive proposals are not fully developed, I have rather the

19. BERTRAND DE JOUVENEL, *SOVEREIGNTY: AN INQUIRY INTO THE POLITICAL GOOD* xii (1957).

20. I have developed this theme more fully in a recent article, *The Matchmaker: or Toward a Synthesis of Legal Idealism and Positivism*, 12 JOURNAL OF LEGAL EDUCATION 1 (1959).

intention of suggesting problems for the author's future consideration than criticizing the solutions he here adumbrates. In this work he has already done much to resuscitate the "educated man," and he has admirably prepared the way for a more sensitive and creative use of reason.

IREDELL JENKINS

THE PHILOSOPHY OF LAW IN HISTORICAL PERSPECTIVE. By Carl Joachim Friedrich. Chicago: The University of Chicago Press, 1958. Pp. x, 253. \$4.75.

Professor Friedrich is to be congratulated for having produced a book on the philosophy of law which, in all its succinctness and brevity, covers an immense ground both historically and analytically. The problems discussed are often complex and difficult; yet the author manages to present his arguments, ideas, and theories in a clear and forthright fashion. An excellent introduction for the beginner, the book is equally stimulating for the more advanced student and scholar. Often one wishes to see a point pursued and elaborated more fully; but, given the relative brevity of the book as compared with its ambitious scope, one realizes that the reader himself must continue on his own where the author has left off. This is not a criticism of, but a tribute to, the work, because it testifies to its provocativeness and honesty: although the author never sits on the fence on any important intellectual issue, he shows, directly or by implication, that he does not consider himself to have said the last word on the subject at issue, and that much in the philosophy of law, despite its venerable history of over two millennia, still needs to be done—crude spadework in some areas, and finer decorative work in others.

Legal intelligence in the English-speaking world (as expressed in doctrine, practice, and organization) is probably unsurpassed in the world today, and possibly of the highest order produced at any time in the history of Western civilization; yet, oddly enough, the interest in the *philosophy* of law is, and has been for a long time, relatively weak. Whether this is due to the empirical bent of Anglo-American thought or to the impressive stability of legal (and, by implication, also of political, social, and economic) institutions, is a question which need not be gone into in great detail at this point. What matters is the relative dearth of competent introductions to the historical and analytical problems of the philosophy of law in English. Even those (students of politics, law, or philosophy) who have so far shied away from a systematic study of the philosophy of law because they imagine it to be a dreary and dismal subject, neither fish nor fowl, too legal for political scientists, too philosophical for lawyers, too historical and institutional for philosophers—all these *genera* of the uninitiated will discover, in reading Friedrich's book, that the philosophy of law can be an intellectually exciting experience, quite apart from the broadening of one's professional discipline.

The Philosophy of Law in Historical Perspective is divided into two parts: Part I (pp. 3-188) is historical, and Part II (pp. 191-229) is a "systematic

analysis." This division is not as sharp as it looks at first sight: in presenting the historical evolution of the philosophy of law from the Old Testament to the twentieth century the author nearly always states his own viewpoint, his own comments, criticisms, and doubts with respect to any particular historical phase of legal philosophy. Yet these individual evaluations do not add up to a systematic elaboration of a philosophy such as is attempted in the much briefer second part of the book. This reviewer will frankly state his regret that the proportions were not the reverse: a briefer historical introduction, followed by a much longer systematic analysis. This is where the greatest scientific and scholarly need lies — a systematic and positive presentation of the philosophy of law, written by a thinker who is dissatisfied both with the traditional natural law school of the eternal verities and with the approach of logical positivism or relativism which, revolutionary and fresh at one time, now also exudes the frustration of conventionality. In expressing his regret about the proportions of history and systematic analysis in Friedrich's book, the reviewer realizes that its very title suggests the author's emphasis on the historical development of the philosophy of law. This comment is therefore intended mainly as a plea to Friedrich to present someday his approach to the problem of the relations of law and justice — the core of the philosophy of law — in a detailed and systematic manner; in other words, to expand his tantalizingly brief Part II of the present book into a book of its own.

Moreover, Friedrich's emphasis on the historical evolution of the philosophy of law is deeply embedded in his very understanding of the word "science" as applied to this area of study. Rejecting the narrow identification of science with the laws and regularities of the natural sciences, Friedrich holds that

it is the nature of scientific work — in contrast to the opinions of laymen, to religious dogma, to poetry and the like — that such work is related to a *corpus of learning* which, steadily increasing, deals with a particular *body of experience* and which is thus enlarged by men concerned with this particular body of learning, the scholars or scientists, with the aid of *methods* regarding which there exists *agreement*, potential or actual, among the workers in this field of learning.¹

In one very fundamental sense, the author's point here is unassailable. A student of physics or biology today need not bother about physical or biological knowledge in antiquity, since it is relatively easy to differentiate truth from error in the physical sciences, and once a theory has been proved invalid, it can be conveniently relegated to oblivion. By contrast, there is no such unilinear progress in the social studies and the humanities: it is not even certain whether in these branches of mental activity one can speak at all of "progress." Through the ages, we seem to restate the old human problems, arrive at tentative conclusions rejected by the next generation; and only a few answers have been able to win the assent of subsequent generations. Friedrich is therefore right in pointing out that in a field like the philosophy of law one does not start out from an intellectual *tabula rasa*, equipped only with an electronic computer for the

1. FRIEDRICH, THE PHILOSOPHY OF LAW IN HISTORICAL PERSPECTIVE 4.

accurate measurements of the "facts." One must know what other thinkers have already thought about the principal issues of the philosophy of law, before one can build upon such knowledge as the "foundation" of new interpretations and new theories. Yet the danger in the study and analysis of the philosophy of law, as in other social studies and the humanities, is to emphasize historical evolution at the expense of systematic analysis. Friedrich has partly circumvented this difficulty by not sticking to pure history in the first, or historical, part of his book; nearly each and every phase of past thought in the philosophy of law is not only fairly summarized in its essentials, but also viewed in the perspective of the author's own beliefs and interpretations.

Covering the immense span of time from the Old Testament to the present in a relatively brief space, the author is compelled to treat only the high points in the development of the philosophy of law, and to keep his treatment brief. Yet he manages to present his materials in a fresh and frequently novel light. For example, in writing on the heritage of the Old Testament he challenges the traditional opinion that Roman legal thought is the sole basis of the role of law in the Western tradition, and emphasizes that the Old Testament conception of the paramount role of law and of God as a just God had a decisive impact on the religious tenets of Calvinism and Puritanism and, through them, on legal and political ideas and institutions in England and the United States. In the discussion of Plato's views on justice, Friedrich warns against the customary habit of lumping Plato and Hegel together, both being philosophical idealists, for "the Platonic philosophy of law is closely linked to ethics, while that of Hegel is related to history."² Medieval thought is concentrated on St. Augustine and Thomas Aquinas; Marsilius of Padua receives only half a page. In the opinion of this reviewer, the author does not sufficiently stress the originality and pioneering character of Marsilius' approach to the philosophy of law, particularly his emphasis on the procedural aspects of the law, as contrasted with the Aristotelian tradition of substantive emphasis. Even allowing for brevity and limitations of space, Marsilius deserves more than half a page — particularly since Friedrich himself incorporates the conception of process into his own definition of justice, as appears in several key passages of the book.³ In modern times, Kant is probably the thinker for whom Friedrich feels the closest spiritual and intellectual affinity. He holds that "according to Kant and his idea of law, only constitutional democracy is in the position to create fully obligatory laws, that is to say, laws by which the individual is completely obligated."⁴ This comes very close to Friedrich's own definition in which

just law is a system of reasonable rules which are grounded in the common experience of man, which seek to realize justice, which are created with the participation of all the members of the legal community on the basis of a constitution, and which rest upon the continuous common effort of these members.⁵

2. *Id.* at 15.

3. See pp. 161, 204, 219, 229.

4. FRIEDRICH, *op. cit. supra* note 1, at 129-30.

5. *Id.* at 229.

It is interesting in this connection that Friedrich also presents, in some detail and with deep sympathy, the views of Leonard Nelson, a Neo-Kantian of considerable originality who is still relatively unknown in the United States.

In discussing the reasons for the revival of natural law (or, perhaps more correctly, the revived interest in natural law) in the last two generations or so, Friedrich adduces various lines of explanation, both intellectual and sociological. In particular, he emphasizes the impact of totalitarianism, both Fascist and Communist:

In the legislation of these totalitarian dictatorships, whether fascist or communist, positivism has gone to its extreme. To proclaim that a law is a norm or right law merely because Hitler has willed it violates the most elementary sense of right. The same thing is equally true of the arbitrary actions of totalitarian parties. In the face of that kind of positive law, only a standard valid outside and beyond the law can protect the law.⁶

It is hard to see how Fascist or Communist legislation proves that "positivism has gone to its extreme." Neither Hitler nor Stalin would have regarded themselves as positivists, both having been fanatical dogmatists with no respect for truth or reason; nor has any positivist ever shown any readiness to include Hitler or Stalin into the positivist fraternity. What Friedrich apparently means is that the legal positivist recognizes Fascist or Communist law as law, as norm, but it must be added, emphatically not as "right law." Whether the quality of reality is to be attributed to any reality, good or bad (the positivist view), or to good reality only (the view of philosophical idealism in general and of natural law in the field of law), is a question which goes back to the Sophists and to Plato. If positivism (or empiricism) is the direct ancestor of totalitarianism, it seems odd that those countries in which the tradition of positivism and empiricism has been the strongest (particularly the English-speaking countries) have been least infected with the virus of totalitarianism, whereas countries in which this tradition has been relatively weak (such as Germany, Italy, Russia, Spain) have shown themselves more vulnerable to the spread of totalitarianism or authoritarian tendencies.

Friedrich finds himself in an intellectual dilemma with respect to the problem of natural law that is not uncommon. On the one hand he is unable to accept "the old law of nature consisting of eternally valid principles,"⁷ because the "concept of nature upon which it was founded is no longer acceptable." When, as Friedrich puts it in another passage, "religion can no longer satisfy man's metaphysical interest,"⁸ rational grounds must be found for preferring one value against another in the process of discovering and formulating the nature and conditions of just law. On the other hand, Friedrich expresses himself (even more vigorously) against what he terms "relativists, formalists, and skeptics" in the philosophy of law. Whether relativism is but "a subtle variant

6. *Id.* at 182.

7. *Ibid.*

8. *Id.* at 169.

of skepticism"⁹ is at least open to question, both in the field of epistemology and in that of the theory of values. Relativism is attacked primarily through the work of Gustav Radbruch; Hans Kelsen's theories of law epitomize the most consistent formulation of formalism, relativism, and skepticism; and the "realists" in American legal thought (Jerome Frank, Thurman Arnold, and Karl Llewellyn) are dismissed in extreme brevity as "skeptics and cynics."¹⁰ Whereas in the discussions of Radbruch's relativism Friedrich shows considerable fairness even when he is hostile, there is more *ira et studium* in his presentation of both Kelsen and the American realists. Is it completely fair or accurate to charge Kelsen with "glorification of the state"¹¹ or "a cold recognition of brute power and the application of force"?¹² Friedrich concludes his criticisms of Kelsen with the remark that "such a doctrine offers stone instead of bread."¹³ This remark cannot account for the fact that in all his writings on legal or political philosophy Kelsen has, in a prolific literary career of over half a century, always defended the basic values of liberal democracy within and between nations. The fact that Kelsen was attacked in both Nazi Germany and the Soviet Union with more bitterness and hatred than any living legal thinker might suggest that at least the enemies of just law and liberty perceive where Kelsen stands on these basic issues. As to Friedrich's treatment of the American realists, their quick dismissal as skeptics and cynics goes too far, although this reviewer would be willing to concede that the excessive emphasis on the analysis of power in the law is harmful and analytically exaggerated. For a time, realism in American jurisprudence enjoyed almost a monopoly, but gradually a saner balance is being re-established without throwing overboard what was sound and necessary in the realist approach. The phenomenon which Friedrich so scathingly attacks in realist jurisprudence can also be studied today in American political science: the emphasis on power in the analysis of domestic politics (in the form of special interest groups, big business, etc.) or of international politics (as exemplified in the Kennan-Morgenthau approach). Yet in all these cases, it must be recalled that it is the excessive and often exclusive use of the power-analysis which is incorrect rather than the proper and balanced appraisal of the role of power in all forms of human relations.

Friedrich tries to find a middle ground between the orthodox religious foundation of natural law and the relativistic denial of the problem of just law as being insoluble. The task is to reassert the creative function of reason in discovering what, and under what conditions, law is just. The author refers to his basic philosophic position as "critical rationalism."¹⁴ Applied to the philosophy of law, the author states his views as follows:

Authority cannot be based upon the positive law, because this law itself needs authority. The authority of law is subject to considerable oscilla-

9. *Id.* at 165.

10. *Id.* at 176.

11. *Id.* at 173.

12. *Id.* at 175.

13. *Ibid.*

14. *Id.* at 203.

tion, as is the authority of all communications. Briefly stated, the authority of a communication, be it a command, a counsel, or a thought, rests upon the communicator's capacity for reasoned elaboration. All genuine authority is based upon such rationality of the utterances which are said to be authoritative.¹⁵

Devotion, faith, or similar psychic or emotional phenomena cannot take the place of reasoned elaboration between authority and those subject to it. The section of the book in which Friedrich discusses these ideas is immensely interesting, because they supply the answer, or at least the germ of an answer, to those who can accept neither the complete certitude of religion nor the complete despair of relativism, but look for a moderate position based on reason. Translating this basic philosophical position into more practical terms of law and politics, Friedrich emphasizes the concept of *constitution* as the basic law, the norm of norms:

It is the right to remain or to become an organized people, a nation, structured in many free associations and groups. This idea or norm is basic. The notion that a people could be willing to sacrifice its own existence as a people to some kind of social, economic, or power-political goal contradicts all the facts we know and must be rejected as erroneous. These "facts" upon which the argument rests are clearly made available by what scientific research in the social sciences and in history has shown. We are no longer obliged to derive these propositions, as did the older natural law theory, from a metaphysically grounded view of human nature. Rather, the findings of history, psychology, sociology, and natural science enable us to demonstrate the propositions with a high degree of probability.¹⁶

This statement shows the difficulty (not impossibility) of applying the author's basic philosophic position concerning the creative role of reason to practical propositions or conclusions. If Erich Fromm's thesis of the "escape from freedom" is essentially correct, then circumstances can be envisaged in which a people is willing to sacrifice its freedom or even existence in the pursuit of some power-political or other goal. Is the drive for constitutional government based on limited authority and reasoned intercourse an innate human impulse or a product of specific societies and civilizations? Can the social sciences, history, or psychology discover objectively valid norms in human behavior and thus help to bridge the gulf between the Is and the Ought? Friedrich seems to answer this question in the affirmative. Others may be more cautious. Our hope must certainly lie in this direction. Whatever the ultimate answer to these questions may turn out to be, Friedrich's book has the supreme merit of raising them in a forthright fashion—not glossing over genuine difficulties—and courageously trying to break the deadlock between faith and despair by a renewed affirmation of reason as the most authoritative source of authority itself.

WILLIAM EBENSTEIN

15. *Ibid.*

16. *Id.* at 220.

ON LAW AND JUSTICE. By Alf Ross. Berkeley & Los Angeles: University of California Press, 1959. Pp. xi, 383. \$6.00.

This is the American edition of a work originally published in Denmark in 1953. It deals primarily with law, secondarily with justice. The first nine of its seventeen chapters discuss questions such as the concepts of "law" and "valid" law; the sources of law; the judicial method of interpretation; legal terminology; the concept of "right"; the distinction between public and private, substantive and procedural law; and the interrelations between private dispositions and a legal order. They follow a modified line of "legal realism," ultimately referring to what the courts do. From the tenth chapter on, the book turns to the core problem of jurisprudence and legal philosophy, i.e., natural law. Only to this second part do I address myself here.

Professor Ross has remained the ardent opponent of natural law, that his earlier writings proclaim him.¹ His keen logical mind is at its best when he assails sloppy argument and hidden fallacies in the customary types of defense mustered in support of natural law doctrines. Much of what he says in this respect parallels the work done by other positivistic or relativistic writers, including the moderate group of those who limit their relativist approach to "scientific" discussions of value problems. He adds many original arguments and striking illustrations (especially, pp. 258 ff. and pp. 277 ff.). Like so many other opponents of higher-law doctrines, however, he mars the brilliance of his presentation by succumbing to the usual tendency of overshooting the mark. For he does not rest his case with his able refutation of attempts to demonstrate the validity of higher law in scientific terms but includes caustic arguments that sound as though he in turn had been able to prove that there is *no* higher law. Although he stops short of actually raising that claim,² he frequently speaks of higher law as if belief in it were a ridiculous infantilism.

Of this I shall give a few illustrations. He begins the tenth chapter with the statement that "the contrast between the philosophy of natural law and a realistic theory of law on a sociological foundation is not a contrast between scientific theories but between an approach to life compounded of magic, religion, and metaphysics and one that is scientific."³ The attitude that underlies natural law doctrines is "typically infantile." "On questions of social life, morality, and law we remain stranded in a persistent infantilism. The philosophy of natural law is one of its products."⁴ This pejorative attitude toward higher-law ideas per-

1. See *THEORIE DER RECHTSQUELLEN* (1929), *KRITIK DER SOGENANNTEN PRAKTISCHEN ERKENNTNIS* (1933), *TOWARDS A REALISTIC JURISPRUDENCE* (1946), *WHY DEMOCRACY?* (1952), and a review of Kelsen in 45 *CALIFORNIA LAW REVIEW* 564 ff. (1957).

2. "Strictly speaking, metaphysical assertions do not admit of being disproved, precisely because they disport themselves in a sphere beyond the reach of verification. One learns simply to bypass them as something that has no rightful place or function in scientific thought. Has anyone ever proved that it is not Zeus or the fate goddesses who ordain the path of the sun? All that we can say is that modern astronomy manages without this assumption. Similarly the most effective way to vanquish metaphysics in law is simply to create a scientific theory of law whose self-sufficiency will push metaphysical speculations into oblivion along with other myths and legends of the childhood of civilisation." (p. 258)

3. ROSS, *ON LAW AND JUSTICE* 227.

4. *Id.* at 228.

meates the author's whole interpretation of the history of philosophy. The Sophists had given expression to the burgeoning scientific and humanistic attitude in the fifth century B.C. But then, lo, on came the two bad boys, Plato and Aristotle. Under their influence "liberty of thought succumbed." Their philosophical systems "signified a fatal reaction. In these two men all forces united to reinforce the diminishing belief in the absolute, a cosmic and moral world order."⁵ They put philosophical metaphysics in the place of magic and religion; yet metaphysics was in essence "of the same origin, but employing greater refinement." Philosophical-metaphysical speculations he calls "an intellectual activity which in its logical and systematic construction imitates disciplined scientific cognition, but which is in reality more a new mythology."⁶ Searching for the essence of all things, Aristotle thought he found the essence of a human being in that part of the soul which is endowed with reason. "By this Aristotle broke man asunder into two parts and introduced a distinction which has been the foundation of all spiritualist metaphysics. Man belongs to two worlds. As a sensual being he is a part of nature, as a creature of reason he belongs to the realm of morality, validity, and liberty."⁷ His leading ideas were carried on in Catholic natural law.

True, it can indeed be said that, in balking at the unilateral reliance on external appearances and referring to such intangibles as the soul and reason, Socrates, Plato, and Aristotle did open the gates to speculations, most of them nonscientific in character. We may, therefore, concede that in the development of scientific research as distinct from speculation they initiated what Ross calls a "reaction." But is that all there is to it? Was their "discovery of the soul" only a bad thing? Did it not also, and even primarily, open our eyes to the potentiality of a deeper meaning of human life than that of satisfying the senses? To mention only the scientifically unfortunate effects of their teachings without giving due weight to the fortunate ones means to distort *Geistesgeschichte*. Apart from this, what is our justification in ignoring the potentiality that they and their followers through the ages may have been right in supposing that there is a God and a human soul, although inaccessible to the tools of science except in vague speculations? A scholar may personally disbelieve that there are, as the author appears to be inclined to do.⁸ But does this personal opinion warrant his scientific neglect of the scientifically irrefutable divine alternative and his disdain for those "infantile" people who take it more seriously than he does?

This failure to admit that his own insight, his own cocksureness, may be in error leads the author to extreme statements also on the idea of justice. "A says: I am against this rule, because it is unjust. What he should say is: This rule is unjust because I oppose it."⁹ When Hitler massacred the Jews on the basis of demonstrably false accusations or had people tortured for not doing what their conscience forbade them to do, was the only thing we were justified in saying: This is unjust because I oppose it? Were we not entitled to say:

5. *Ibid.*

6. *Id.* at 237.

7. *Id.* at 238-39.

8. *Id.* at 340.

9. *Id.* at 274.

I am against it because it is unjust? What Ross again overlooks here is that, although we may be unable to prove the validity of our standards of justice and injustice, our standards still may be right in the sense that they are in line with suprahuman or all-human moral laws. The author adds further emphasis to his view. "To invoke justice is the same thing as banging on the table: an emotional expression which turns one's demand into an absolute postulate."¹⁰ "The ideology of justice is a militant attitude of a biological-emotional kind, to which one incites oneself for the implacable and blind defense of certain interests."¹¹ "To declare a law unjust contains no real characteristic, no reference to any criterion, no argumentation. The ideology of justice has thus no place in a reasonable discussion of the value of laws."¹²

The consequence of this view is that no dictatorial decree, not even the most barbarous one, can be rejected by courts — and, a fortiori, by civil and military employees, including the slave drivers in concentration camps — on the ground that it is objectively and flagrantly unjust. How could a great jurist, a Danish author at that, ignoring this crucial test of every theory of law and justice, go so far as to imply that to call barbarous decrees "unjust" is nothing more than "banging on the table"?

Is it really nothing more? We all know that the solution of this problem is not easy. By pounding the table a second time against Ross's view that my denunciation of Nazi laws as unjust is merely banging on the table I have not refuted it, nor solved the problem. But at least I want it to be acknowledged that the problem cannot be so easily brushed aside. Elsewhere I have tried to present a solution. I see it in the distinction that should be made between the — sometimes legitimate — denial of *juridical* validity to a law because it violates certain minimum standards of justice considered basic within a civilization at a definite historical period, and the — rarely if ever possible — *scientific* invalidation of the value judgments underlying that law, i.e., their invalidation in absolute, nonhistorical terms. I see promise also in inquiries into what basic elements of justice are universally and inescapably recognized by all human ideas and feelings of justice (including such feelings as pounding the table in protest against injustices), as the postulates of truth or veracity and of respect for the necessities of nature seem to be universal and inescapable. As a practical step, international conventions on minimum standards of justice, admitting appeals to international courts at least on a regional basis, might help. But whatever the solution, the problem should be recognized and squarely faced. If that be done it will be hardly possible to speak so derisively of higher-law ideas as does our author.

Nor is he entirely consistent in his condemnation of idealistic metaphysical arguments. For he does recognize that the idea of justice contains at least some concrete demands. Not only must a law be "general"; this requirement might be derived analytically from the concept of "law" as usually understood, with no reference to "justice." But furthermore, Ross admits, the idea of justice demands, first, that there shall be a law as the basis of decision, and second, that the decision be the correct application of a law.¹³ Justice, conceived as an ideal for

10. *Ibid.*

12. *Id.* at 280.

11. *Id.* at 275.

13. *Id.* at 280.

the judge, the author says, is a "powerful idea in social life," accepted by the judge himself, "as the highest professional standard." In this relation, he concludes, "the idea of justice makes good sense. It refers to observable facts."¹⁴ "To do injustice (subjectively) means that the judge allows himself to be guided by personal interest, friendship . . . or other motives deviating from the commands of the law."¹⁵

My question here is: Why does the idea of justice make good sense when it motivates the judge to apply a law, and even a Hitlerian law, "correctly," but not when he or we criticize the law? If reference to the idea of justice is permitted in praise or blame of the judge, why should it be categorically refused in praise or blame of the legislator? Under Ross's basic assumptions, to argue that the idea of justice demands "correct" application of any law by the judge should be considered as arbitrary as, according to his view, it would be to say that the idea of justice requires, e.g., adherence to truth by the legislator. According to my view, the latter is *not* arbitrary, but the former *is*, unless modified.

These limitations of an otherwise splendid work of scholarship are so characteristic of the perennial contest between adherents and opponents of higher law that it is the duty of a reviewer in a journal devoted to these questions to bring out these limitations with merciless pointedness. But after this has been done, I wish to testify to the great merits of this book otherwise, as a first-class, unusually comprehensive, clear and circumspect inquiry into basic questions of law and of its interpretation by the courts, of the relations between science and politics,¹⁶ and also, to repeat, as an able refutation of many untenable claims made by adherents of higher-law doctrines. Elimination or modification of some forty or fifty lines in the sections dealing with natural law would add considerably to the great value of the book. My pinpointing of just these few passages may well appear to the author as a flagrant injustice done to the totality of his work, causing *him* in turn to bang on the table. But, from the standpoint of the subject matter of this journal, that was the thing I had to do.

ARNOLD BRECHT

14. *Id.* at 284.

15. *Ibid.*

16. *Id.* at 297 ff.

AFTER UTOPIA. THE DECLINE OF POLITICAL FAITH. By Judith N. Shklar. Princeton: Princeton University Press, 1957. Pp. x, 309. \$5.00.

Like Christopher Robin, political philosophy has been attended of late by "all sorts and conditions of famous physicians." The bulletins all agree that the patient's condition is serious, and not a matter of sneezes and wheezes. The editor of a recent collection of essays, largely written from the standpoint of "language philosophy," has opined that "the tradition of political philosophy has been broken . . . For the moment, anyway, political philosophy is dead," the apparent victim of the new philosophy.¹ Harsher in tone, and equally gloomy, is

1. PETER LASLETT (ed.), *PHILOSOPHY, POLITICS AND SOCIETY* vii (Oxford, 1956).

the analysis of Leo Strauss: "Today, political philosophy is in a state of decay and perhaps of putrefaction, if it has not vanished altogether."² For Strauss the demise of political philosophy is traceable to a particular malignancy (*cancer machiavellianus*) which was stimulated in its final stages by *virus scientiae socialis*.

The present volume, written with grace and verve by a young political theorist at Harvard, belongs to this same *genre*, although she assigns different causes for the fatality. The argument implicit in her study is that the health of political theory depends upon the viability of one of its unique forms, utopianism or radicalism, the two concepts being used interchangeably in this study. Briefly stated, the author's concern is to explore "the gradual decline of rational political optimism in the West" (p. ix) over the past two hundred years. Rationalism and optimism are central elements in the author's definition of radicalism. She asserts the "minimum utopian faith" of genuine radicalism requires "the belief that the people can control and improve themselves and, collectively, their social environment." The corollaries of this belief include a conviction about "inevitable progress" and about the "ability of free, rational men to live without coercion in a perfectly harmonious society." (pp. 219-220) Today "the urge to construct grand designs for the political future of mankind is gone. The last vestiges of utopian faith required for such an enterprise have vanished." (p. vii) It is further contended that one of the consequences of the demise of radicalism is the decline of political theory as a whole. "It is not only the civic consciousness of the Enlightenment but the entire tradition of political theory that is at a standstill." (p. 269)

The mood dominating political theory is said to be one of "political helplessness." The causes of this malaise are traced to a loss of conviction, a "decline of political faith," in the basic postulates of eighteenth century liberalism. The faith in rationalism, the optimistic belief in progress and equality, and the aggressive secularism of the Enlightenment are set forward as the central tenets of liberal-radical utopianism; and the greater part of the book is concerned to show how these tenets fell victim to the "romantic and Christian social despair" which followed the French Revolution.³ Professor Shklar depicts the romantic reaction as a dominantly esthetic protest on behalf of artistic creativity, the protest of the "unhappy consciousness" which feels itself deeply alienated from the bleak mechanistic world fashioned by modern science and philosophy. Against the dehumanizing abstractions of philosophy the romantics pitted the enduring values celebrated in literature and art.

The author then proceeds to explain how the romantic attack on the Enlightenment was re-enforced by Christian writers who, now sufficiently recovered to mount a counterattack, took out after the forces of naturalism, scientism, and optimism. Taken together, the romantic and Christian writers inaugurated a continuous criticism of the Age of Reason which has persisted down to our own

2. Leo Strauss, *What is Political Philosophy?*, 19 JOURNAL OF POLITICS 345-46 (1957).

3. It should be emphasized that the author constructs her picture of "radicalism" and "utopianism" mainly from the writings of the liberals and not from writers such as Mably, Morelly, or Rousseau. This brings her interpretation well within the general position established by "realists" such as E. H. Carr, Hans Morgenthau, and Reinhold Niebuhr. The criticisms directed at the present volume apply with equal force to the caricature of "liberalism" drawn by these writers.

day. As Shklar points out, existentialism is lineally descended from the romantics, while numerous theologians and Christian writers of all persuasions today follow the track laid down by the French "reactionaries" of the first quarter of the nineteenth century. These continuities and interconnections are discussed by the author with a wealth of vivid detail drawn from an impressive variety of sources including literature, poetry, theology, and philosophy. She concludes that the case against the political assumptions of the Enlightenment has been successful, but the romantic and Christian writers have failed to provide adequate alternatives. As a result, "the grand tradition of political theory that began with Plato is, then, in abeyance." (p. 272)

As a first step in assessing this study, the following question can be raised: Accepting for the moment the contention that the state of political theory requires some investigating, what kind of evidence, criteria, or arguments would be relevant to demonstrating that political theory is moribund? The philosopher of language would answer that traditionally political philosophy has posed questions that a philosopher cannot answer without violating the criteria of genuine philosophical activity. It follows that political philosophy is doomed to expire of neglect. Professor Strauss would reply that it is because modern political philosophy has departed from the wisdom of classical political philosophy and no longer regards absolute values or the best society as genuine problems. The present volume follows a very different method. It proceeds on the hypothesis, which is never really discussed, that if it can be shown that *radical* political theories have declined in significance and appeal (the two seem to be interchangeable for the author), then, *mutatis mutandis*, political theory in general has suffered the same misfortune. Thus Shklar seems to believe that the statement, "there is nothing that could be called a genuinely radical philosophy today," is identical with saying that there are no "serious rival *political* philosophies" to challenge the romantic and Christian attack upon eighteenth century radicalism. (p. viii)

In addition to this puzzling procedure of arguing that the fate of political theory is determined by the vicissitudes of radicalism, there is the further difficulty which issues from the failure to distinguish properly between a *psychological condition* inhibiting the enthusiastic acceptance of a particular theory and, on the other hand, the *critical refutation* of the same theory. Thus the author rejects out of hand any political theory premised upon the possibility of rational political action. "The fact is," she declares, "that it is next to impossible to *believe strongly* that the power of human reason expressing itself in political action is capable of achieving its ends." (p. ix, emphasis added) Similarly, socialism is dismissed with the remark that it is unable to recapture the "lost spirit" of utopianism and displays a mood that is "neither radical nor hopeful today." (p. 256) These conclusions rest upon a highly dubious assumption that in conducting a post-mortem of this kind the criterion is not the validity of a political theory that concerns us but its effectiveness in terms of popular support. Shklar's tendency to seek a correlation between the prevailing sense of "political helplessness," the failure to "construct grand designs," or to generate a "utopian faith" and, on the other hand, the "absence of original [political] theories" suggests that her concern is not with the "grand tradition" of political philosophy but with something that is connected to it but quite different, namely, political ide-

ology. Stated somewhat differently, she cannot truly demonstrate that political theory is in "abeyance" because the problem which she has selected concerns "belief" not "theory," political enthusiasm rather than knowledge. In pointing this out I am not casting doubts on the legitimacy of the undertaking, but only on the legitimacy of the inferences.

The next problem to which I should like to turn relates to the treatment of radicalism. Certain doubts are raised by the author's absolute certainty that utopian radicalism is a thing of the past. One of these doubts is associated with the foreshortened perspective through which radicalism is surveyed, while the other stems from the unduly narrow definition of radicalism that is used. The author devotes four chapters to tracing carefully the two basic alternatives to radicalism, romanticism and Christian "despair." In contrast, the doctrines of the radicals, as distinguished from what critics have said about the doctrines, are discussed in one chapter. Housed together under the same roof of radicalism we find a mixed group of lodgers which includes Mill, Hayek, Marx, and the Fabians. It might be noted that Mill is included more by sufferance than grace for he was, according to Shklar, "as much a romantic as a liberal." (p. 231) Actually what the author intends to portray in this chapter entitled "The End of Radicalism" is the shriveling of socialist enthusiasm and the hardening of liberalism into a form indistinguishable from that of conservatism. One wonders, however, whether these phenomena are really so conclusive or as irreversible as Shklar suggests and whether a longer perspective on the twentieth century would not lead to the conclusion that radicalism is still a strong current in political life. Can a just estimate of radicalism be made by excluding writers like Sorel and Lenin, or movements like Guild Socialism, syndicalism, or communism? To move closer to our own time, is it reasonable to exclude the liberalism of John Dewey from the discussion of recent radicalism? or to be quite so certain that utopian socialism is dead when Erich Fromm's *Sane Society* is ready at hand?⁴ Shklar overlooks these points because of an *idée fixe* that if eighteenth century radicalism is dead there cannot be other forms of radicalism flourishing. This is the result of a rigid belief that no doctrine deserves to be called radical unless it accepts a pledge of allegiance to eighteenth century radicalism. This leads to the position that a political theory cannot be simultaneously radical and critical of the Enlightenment. It is not at all easy, for example, to discover what exactly is Shklar's assessment of Marx. She has shown that eighteenth century radicalism was riddled by its critics, yet she emphasizes that Marx had rejected some of the basic postulates of the Enlightenment. Since her criticisms of Marx are mainly directed at his determinism, and since determinism is regarded by her as alien to eighteenth century radicalism, we are left with the impression that Marx and, for the same reasons, the Webbs, were not genuine radicals.

So intent is Shklar on demonstrating the emotional bankruptcy of socialism that certain important developments are overlooked: the permeation of Marxism into the social sciences; the wide vogue enjoyed by the so-called "humanist" teachings of the younger Marx; and the strong romantic strain evident in Marx's ideas on alienation and work. At the same time, the rigid definition of utopianism

4. Professor Shklar excludes discussion of the role of Marxism and Leninism in non-Western countries and of the "feedback" to the West of its own ideological exports.

prevents her from attending one of the truly ominous developments in recent social thought: the reappearance of the utopian impulse in new form. In an ideal society, such as that proposed by Skinner in *Walden Two*, efficiency and plenty are promised, not by encouraging man's rational potentialities, but by conditioning his responses. The growing resort to manipulation in all contemporary societies, the perfecting of the instruments of manipulation, and the receptivity of modern masses to these techniques have created ideal conditions for a renewal of utopianism. For the first time in the long history of political thought, utopias are economically and psychologically feasible.

Turning now to some particular interpretations, since the author has been primarily occupied with examining certain intellectual responses to the Enlightenment, it is a matter of some importance to note that she offers a vignette of the Enlightenment which endorses the Christian and romantic estimate. The transformation of the Enlightenment, from being the historian's shorthand for a complex and contradictory period to being a caricature symbolizing rational man in his pride, can be seen in Shklar's summary of the "faith" of the Age of Reason:

It was reason that bound men to the past and to the future. It was reason that brought men together. It was reason that provided every standard for action and for judgment. . . . As its ultimate aim the Enlightenment visualized the perfectly rational society of men as equal as they were alike in their common rationality. (p. 11)

Whatever polemical value this characterization may have, it does obscure some profound disagreements. Voltaire, Diderot, and Condorcet may be credited with a certain "faith" in reason, but it was far from unbounded. Diderot and Voltaire, in particular, had a thinly concealed contempt for the average person; many of the *philosophes* carried on flirtations with benevolent despots; the mechanistic psychology to which most of them subscribed and on which they based their "environmental" theories of human improvement was part of a larger belief that reason belonged to the few and that the many had to undergo a long tutelage before being certified as rational beings. Moreover, if the above quotation is applied to the English liberals of the period — Shklar uses evidence drawn from Adam Smith, Bentham, and Hume to fill in details of her portrait of the Enlightenment — the interpretation becomes misleading. In the first place, for a large number of liberals, especially those descended from Locke, it was assuredly not "reason that bound men to the past and to the future" but rather property and, more particularly, the expectations accompanying the possession of property. Locke had initiated this line of argument in order to explain why later generations were obligated to obey the original contract even though they had not been signatories. His answer was that the inheritance of property obligates later generations by a kind of "tacit consent," for to inherit property signifies one's willingness to accept the political arrangements which had made possible the transmission of property.⁵ When liberals realized the wonderful potentialities of property for holding men to obedience, their theory was equipped with

5. LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT 73, 119-122.

a "realistic" view of social cohesion, one far more tough-minded than their critics have been willing to admit. At the same time, the "expectations" centering around the use and transmission of property came to perform the same role in liberal theory as the idea of "continuity" in conservatism. Bentham's summary could not have been improved by Burke:

... it is by means of [expectations] that the successive moments which form the duration of life are not like insulated and independent parts but become parts of a continuous whole. Expectation is a chain which unites our present and our future existence and passes beyond us to the generations which follow.⁶

Secondly, it was not reason, strictly speaking, which prompted liberal man to form associations, nor was it reason which furnished the motor of human behavior. Hume's views on these matters are too well known to bear repeating, but what is overlooked is the extent to which English liberal economists largely agreed with him. Shklar is not alone in erroneously believing that the classical economists' idea of "natural harmony" rested on nothing more substantial than a simplistic deduction from a few crude rationalistic postulates about human behavior. Adam Smith's famous "unseen hand," which so many commentators have interpreted as a symbol of the convergence of rational plans, individually conceived, into a rational good for the whole society, and which Shklar interprets as presupposing "a society of perfectly free and reasonable persons," (p. 9) was in fact a symbolic representation designed to account for the fact that human behavior was motivated by passion and desire rather than by reason. Liberal society was rooted in desire, and social harmony was considered to be the product of the passions:

[The rich] consume little more than the poor, and in spite of their natural selfishness and rapacity, though they mean only their own convenience, though the sole end which they propose from the labours of all the thousands whom they employ be the gratification of their own vain and insatiable desires, they divide with the poor the produce of all their improvements. They are led by an invisible hand to make nearly the same distribution of the necessities of life which would have been made had the earth been divided into equal portions among all its inhabitants; and thus without intending it, and without knowing it, advance the interests of the society, and afford means to the multiplication of the species.⁷

What rendered social unity, public policy-making, and collective action difficult problems for the liberal was neither an excessive reliance on reason nor a belief

6. Cited in LIONEL ROBBINS, *THE THEORY OF ECONOMICAL POLICY IN CLASSICAL POLITICAL ECONOMY* 63 (London, 1952).

7. ADAM SMITH'S *MORAL AND POLITICAL PHILOSOPHY* (ed. H. W. Schneider) 215 (New York, 1948). For the more famous passage about the "unseen hand" see *WEALTH OF NATIONS*, Bk. IV, ch. ii, p. 423 in the Modern Library edition (New York, 1937). Note the explicit formulation by Smith of the theory of "unintended consequences" which has become so popular in the social sciences. Smith's belief that action was rooted in desire was very similar to Hobbes's formulation, but the more immediate influence was Hume's famous dictum about reason being the slave of the passions, an assertion that was accepted both by the classical economists and by the Benthamites.

in the rationality of individuals, but rather the subjectivist and necessarily private character ascribed to desires. A true rationalist could not remain consistent with his rational assumptions if he were to assert, as Bentham and countless liberals carelessly did, that "there is no one who knows what is for your interest so well as yourself. . . ." ⁸ The heart of the problem was that, despite his protestations, the liberal really did not believe that men "knew" what their interests were in the way that they knew a mathematical formula, a logical proof, or a scientific fact. Instead, the liberal accepted the Hobbesian argument that interest centers upon objects of desire; and these, in turn, are deemed to be valuable because we feel them to be so. As J. S. Mill later pointed out, the ultimate test of what is desirable is whether in fact men do desire it; that is, there is no objective standard independent of what men want. ⁹

Nor is it true to say, as Shklar does, that liberalism was innocent of the possibility that unavoidable conflicts might arise between public and private interests. Smith's analysis of the three major economic classes (landowners, entrepreneurs, and workers) was guided by the explicit assumption of an inherent conflict of interests between them and by the prediction that conflict would increase in proportion to the declining rate of economic growth. ¹⁰ One of the basic distinctions to be borne in mind is that in England liberalism was crossed, so to speak, with the sobering counsels of classical economics; thereby strengthening the tendency towards moderation which had been so prominent in the Lockean teaching. The French *philosophes*, on the other hand, were largely innocent of economic theory and, when they were not, they tended to emphasize the more expansive doctrines of Physiocracy. Although a French physiocrat, like Mercier de la Rivière, could proclaim that man was capable of creating an organization "which would necessarily produce all the happiness that can be enjoyed on earth," ¹¹ the English writers, in contrast, were acutely conscious of the scarcity of capital available for investment, and hence were sensitive to the limits of economic growth and, *pari passu*, to the possibilities of happiness. ¹²

My purpose here is not to quibble over trivial details but to warn against the prevailing misunderstandings of the liberal tradition, misunderstandings which the recent vogue of the "new conservatism" has converted into a fetish. In reality, the greatest exponents of liberalism were more apt to dwell on the numerous threats of pain in the world than on the abundant possibilities of happiness. For this reason the "pursuit" of happiness was not the rhetoric of jejune optimism but the expression of a profound anxiety. The immediate cause of human action, according to Locke, was "uneasiness," which arose from the desire for "some absent good." "The chief, if not only spur, to human industry and action is uneasi-

8. JEREMY BENTHAM'S ECONOMIC WRITINGS (ed. W. Stark, 3 vols.) III, 421-23; 433 (London, 1952-54).

9. J. S. MILL, UTILITARIANISM, LIBERTY AND REPRESENTATIVE GOVERNMENT 32-33 (Everyman edition).

10. WEALTH OF NATIONS Bk. I, ch. viii, xi (conclusion); JAMES MILL, ESSAY ON GOVERNMENT 3 (Cambridge, 1937).

11. L'ORDRE NATUREL ET ESSENTIEL DES SOCIÉTÉS POLITIQUES, *Discours préliminaire* vii-viii (Paris, 1910).

12. 1 JEREMY BENTHAM'S ECONOMIC WRITINGS 213; 225. SMITH, WEALTH OF NATIONS Bk. IV, ch. vii, 592-97.

ness."¹³ If, as the classical economists proceeded to demonstrate, man's material condition was unremittingly threatened by scarcities of land, labor, and capital, and if, as the Malthusians convincingly argued, the inevitable increase in population added still a further pressure on scarce resources, it was not surprising that "the scanty materials of happiness," as James Mill put it, had to be pursued and tracked down. Against this background, what J. S. Mill wrote about his father was not atypical of the liberal tradition: "He had . . . scarcely any belief in pleasure. . . . He deemed very few of them worth the price which, at least in the present state of society, must be paid for them."¹⁴ It is not too much to say that the liberal's obsession with pleasure and happiness was the anxious response to his deep-seated belief in the ubiquity of pain. A remark of Bentham's shows how exposed were the nerve ends of liberal man and how acute his sensitivity to pain: "Never has it happened to me to witness suffering on the part of any creature, without experiencing, in some degree or other, a sensation of the like nature in my own nerves."¹⁵ Even so perfect a representative of the Enlightenment as Benjamin Franklin avowed that the human condition was far from being one where pleasure and pain existed as distinct objectives and where the prudent man could pick a calculated path towards the one and avoid the other. Pleasure was in fact rooted in pain; hence to attain pleasure was merely to escape pain. "*Pleasure is wholly caus'd by Pain. . . . The highest Pleasure is only Consciousness of Freedom from the deepest Pain. . . .*"¹⁶ Sentiments such as these suggest that Christians and romantics had no monopoly on "despair" and that although the Enlightenment had its pastels, here and there it was touched with more somber hues.

Turning from liberalism, the next problem is connected with Shklar's discussion of romanticism. I am not concerned with particular interpretations, nor with the way that this difficult construct has been handled. On both accounts the author has handled the complex materials with great skill. What is questionable is the extent to which romanticism provides us with any reliable clues to the fate of political philosophy. Despite the great amount of attention lavished upon the romantics, the author is led to confess that their politics were "negative in the extreme," that their "one concern was to defend non-political man against the encroachments of public life"; that, in short, they were "anti-political." (pp. 96, 98-99, 145, 163, 231) These admissions come close to saying that the romantics really had no political theory, only a set of attitudes or postures towards politics. This poses the question of whether the romantics were contributive to or reflective of the decline of political philosophy: if they cannot be said to have practiced it seriously, their comments, at best, helped to create a general climate hostile to political theory; at worst, their ideas were largely irrelevant to the question. I cannot agree that these conclusions are to be avoided by the disclaimer that "in a limited sense" the romantics can be said to have had a political philosophy, or that "the infusion of entirely unpolitical motives in political life and thought" (p. 99) makes a political philosophy of the laments of the poet or the revulsion

13. ENQUIRY CONCERNING HUMAN UNDERSTANDING II, xx, 6; xxi, 31, 33, 34, 40.

14. AUTOBIOGRAPHY 40 (London, 1924).

15. 5 WORKS 226 (ed. Bowring in 11 vols., Edinburgh, 1843-49).

16. A DISSERTATION ON LIBERTY AND NECESSITY, PLEASURE AND PAIN 16-20 (Facsimile Text Society edition, New York, 1930).

of the esthete. I am not suggesting that the historian of political ideas ought to ignore romanticism, but only that he deal with romantics who sought to focus their reactions in a politically significant way. Without intending to criticize the author for a book she did not intend to write, it can be suggested, nevertheless, that the encounter between romanticism and politics can be discussed more fruitfully by examining writers who were both political (or social) theorists *and* romantics, rather than romantics who happened to have a sporadic interest in politics. Writers such as Fourier, Proudhon, Considérant, Herzen, and Sorel attempted to give expression to the romantic impulse, but they did so with reference to concrete issues and proposals which could be discussed through politically meaningful categories such as "power," "authority," "distributive justice," "collective action," and "community." Esthetic and poetic categories, on the other hand, may evoke our sensibilities, but they are severely limited in what they can communicate about politics.

Shklar has some devastating things to say about some recent Christian thinkers, and anyone who is inclined to accept the fashionable thesis of totalitarianism being the lineal descendant of liberalism will do well to ponder her sharp rebuttal. Her critique of Christian writers¹⁷ issues in a judgment similar to that rendered on the romantics: both tendencies were hostile to liberal politics and theories, but because both were torn by the same urge to escape history and politics, each was unable to offer a genuine alternative. That both romanticism and Christian thought should have entered the same cul-de-sac would seem to support the conclusion that they can tell us very little about the present state of political theory. If we examine the writers that are discussed in this volume it soon becomes apparent that they illumine precious few of the topics which traditionally preoccupy the political theorist. What can Heidegger tell us about the nature of political authority? Brunner about the dynamics of political conflict? Jaspers about the role of the citizen? Eliot about political obligation? That they may not be interested in these problems is not a rebuttal but a confirmation of my point. It follows, therefore, that since they are uninterested in the basic problems of politics, their assertions cannot yield much that is relevant to the decline of political theory.

17. Professor Shklar's presentation of modern "Christian fatalism" has the same fault as her treatment of radicalism. In this instance it is the lack of a perspective on the past that is most troublesome. For the sake of brevity I shall merely list my objections in cryptic form:

(1) It is incorrect to allege (p. 166) that "the notion of progress . . . is never acceptable to Christians." Eusebius among the ancient Christian writers is a clear example of such a belief, and so were some of the Puritan writers in the first half of the seventeenth century.

(2) Again, the writings of Eusebius and many other Christian apologists of the age of Constantine provide exceptions to the assertion that "Christian faith has never been conducive to a complacent acceptance of secular culture." (p. 165)

(3) Nor have Christians unanimously believed that "the only thing that matters in politics is its effect on religious faith." (p. 165) It was Augustine who wrote: "*Miser igitur populus ab ipso alienatus Deo. Diligit tamen etiam ipse quandam pacem suam non improbandam . . .*" DE CIVITATE DEI xix, 26.

(4) Christians have always been somewhat ambiguous in their reactions to social and political disasters. A chiliast like Tertullian even acknowledged that "we have no wish to experience these calamities and as we pray that they may be delayed we favour the long-continued existence of Rome." APOLOGY 32.

This brings us to the central question: if we grant that the question has been unsatisfactorily answered by Shklar, yet acknowledge that the decline in the vitality of political theory presents a genuine problem, where should we inquire to find an explanation for this condition as well as an alternative to traditional theory? Following the suggestion mentioned above, I would insist that we turn to consider writers who have confronted the traditional problems of political theory with many of the same categories of relevance employed by writers in the great tradition. This means turning to writers who have asked politically meaningful questions rather than to writers who have attempted the impossible feat of finding esthetic satisfactions or Christian assurances in political life. Alternative forms of explanation, sharply different from radicalism, liberalism, existentialism, and Christian theory, do exist. They are to be found in social science theories, in the apologetics for the modern corporation and its managerial elite, and in the so-called Freudian "revisionists." The issue is not whether we approve of these theories but only whether they constitute viable alternatives in a way that the aforementioned schools do not. My own conclusion is that these forms of theory are genuine alternatives or, to state the matter more accurately, that they represent the forms in which the traditional concerns of political theory have been retained. It follows that political theory has not died; it has been absorbed.

As it would require an extended discussion to bring out the full implications of this suggestion,¹⁸ I shall confine my remarks to three main points: first, to show that the traditional concerns of political theory have been pre-empted by social scientists, especially by those interested in large-scale organizations or bureaucracies; second, to show that the reaction against eighteenth century rationalism is not the monopoly of romanticists and Christian apologists but is a fundamental assumption of many sociologists, managerialists, organization theorists, and the so-called "small group" theorists; third, to demonstrate that the "utopian" element has not been eliminated from these contemporary theories but instead has been incorporated in a highly ingenious way to produce a utopianism without radicalism.

The displacement of political theory from its position of being the sovereign knowledge of society and its well-being began in the eighteenth century with the emergence of classical economics. These early writers were not interested in the narrow delimitation of their subject matter in the way that the contemporary economist is. Instead, they busied themselves tracing out the social ramifications of the division of labor, the relationship between class structure and the organization of production and distribution, the causal connections between the variables of wealth and population and their effects on progress, the motivations which impelled men to adopt one form of behavior rather than another, and the economic implications of long-standing institutions, such as churches, universities, and governments. Thus political economy — a significant title — was able to challenge the hegemony of political theory because in the form given it by Adam Smith and his followers it professed to be a body of knowledge coextensive with the whole life of society. By the nineteenth century, economists, like McCulloch,

18. I might refer here to my forthcoming volume, *POLITICS AND VISION: CONTINUITY AND INNOVATION IN WESTERN POLITICAL THOUGHT* ch. X.

bluntly asserted that political economy was the study of the best interests of society; it was concerned with the means for obtaining "the greatest possible amount of wealth with the least possible difficulty." The science of wealth ranked as the master science: "The establishment of a wise system of public economy can compensate for every other deficiency. . . . Wealth is independent of the nature of government."¹⁹

Parallel with the supremacy of economics was a complementary development in the nineteenth century, a tendency to depreciate the importance of everything that smacked of the political. Saint-Simon, the prophet of the age of organization and managerialism, looked forward to the day when the creation of efficient social and economic organization and the enthronement of the elite of *industriels* would result in the displacement of politics and government by administration. Constant's famous contrast between "classical liberty" and "modern liberty" rested on the premise that bourgeois citizens no longer cared strongly about political rights and were concerned only with those rights which guaranteed immunities to person and possessions. Proudhon, although difficult to categorize on most issues, was easily understood on this one. "The irksome situation of today" was traceable to "*une certaine maladie de l'opinion . . . qu'Aristote . . . a nommé POLITIQUE.*"²⁰ On this topic Marx did not find Proudhon a specimen of *la misère de la philosophie* but quite agreed with him: "Only *political superstition* believes at the present time that civil life must be held together by civil life."²¹ Marx formulated the motto for an age that admired society but despised politics:

*Political thought is really political thought in the sense that the thinking takes place within the framework of politics. The clearer and more vigorous political thought is, the less it is able to grasp the nature of social evils.*²²

At this point the new science of sociology entered the picture. Capitalizing on the century's anti-politicism and its fondness for "society," it proceeded to dislodge economics and proclaim its own pre-eminence. Comte merely stated more crudely and grandiosely what Durkheim, Weber, and Mannheim were to practice. The attack on economics took two forms: the insistence that society could not be adequately understood through economic categories; second, a wholesale rejection of the liberal-rationalist assumption about the superiority of economic activity. On the first point, sociologists contended that the full significance of economic phenomena would be revealed only by sociological inquiry rather than by abstract analyses of rent, capital, labor, and profit. Concerning one of the favorite notions of classical economics, the division of labor, Durkheim declared that its "economic services are picayune compared to the moral effect that it produces, and the true function is to create in two or more persons a feeling of solidarity."²³ At the center of the new science's concern were two

19. J. R. McCulloch, *THE PRINCIPLES OF POLITICAL ECONOMY* 7-9; 23 (Edinburgh, 1825).

20. PIERRE J. PROUDHON, 17 *OEUVRES COMPLÈTES* 167 (Paris, 1867).

21. KARL MARX, *SELECTED WRITINGS IN SOCIOLOGY AND SOCIAL PHILOSOPHY* 220 (ed. T. B. Bottomore and M. Rubel, London, 1956). Emphasis in original.

22. *Id.* at 217 (emphasis in original).

23. *THE DIVISION OF LABOR IN SOCIETY* 50, 55-56 (trans. G. Simpson, Glencoe, Ill., 1949).

closely-connected topics, the conditions required by social solidarity and the conditions making for social disintegration, or, as Durkheim labeled it, *anomie*. The fundamental principle of liberalism, the pursuit of individual interest, was singled out as one of the main causes of *anomie*. The pursuit of interest, Durkheim declared, is motivated by appetite and desire, both of which are "by nature boundless and insatiable." Moral and social restraints are treated as mere "obstacles" by liberal man, but in destroying them he turns life into a "torment," a chase without rule, restraint, or limit. This leads to personal futility and, ultimately, to the demoralization of the individual.²⁴ At the same time, the pursuit of interest makes no contribution to social cohesion, for interest creates only "an external link" which leaves the parties "outside each other." According to Durkheim the lesson for industrial society was clear: "If, then, industry can be productive only by disturbing [the] peace and unleashing warfare, it is not worth the cost." What was fundamental was "not the state of our economy, but rather the state of our morality."²⁵

There is no need to document at length the attack on acquisitiveness and self-interest. Not only is it to be found in the writings of Mayo, Homans, T. N. Whitehead, the "plant sociologists," and the students of "group dynamics," but its pervasiveness is also to be measured by the fact that Lenin's polemics against "trade union consciousness" were mainly an assault on the manifestations of economic rationalism among the workers. Mayo summed up the contemporary indictment against eighteenth century liberalism by saying that the issue "is not that of the sickness of an acquisitive society; it is that of the acquisitiveness of a sick society."²⁶ No longer are the defenders of corporate capitalism occupied with justifying private ownership. The basic problem is to restore the lost sense of community to an industrial age. Just as Burke offered man a "little platoon" of fellowship within a traditionalist society, the apologists of industrialism have discovered a reasonable facsimile in "the facts of spontaneous social organization at the working bench."²⁷ It follows, too, that the theory of progress held by eighteenth century rationalists must be modified, for the danger to social organization in an age of industrialism lies not in stagnation but in the disruptive effects of continual technological change. The "social system" of the factory, "is bound together by sentiments which change slowly and resist change, because rapid change is destructive of routines and rituals, of habits, and of conditioned behavior. Such a change is painful even to a dog."²⁸

Accompanying this critique of liberal rationalism has been a growing convic-

24. *Id.* at 13-15; SUICIDE 247-258; (trans. J. A. Spaulding, Glencoe, Ill., 1951). PROFESSIONAL ETHICS AND CIVIL MORALS 11-12 (trans. C. Brookfield, Glencoe, Ill., 1958).

25. EMILE DURKHEIM, DIVISION OF LABOR 5-26, 119-120, 203-204; LES RÉGLES DE LA MÉTHODE SOCIOLOGIQUE 112-113 (Paris, 1947); PROFESSIONAL ETHICS 16; LE SOCIALISME 297 (ed. M. Mauss, Paris, 1928).

26. THE HUMAN PROBLEMS OF AN INDUSTRIAL CIVILIZATION 152-153 (New York, 1933).

27. *Id.* at 182; L. J. Henderson, T. N. Whitehead, and E. Mayo, *The Effects of Social Environment*, in L. Gulick and L. Urwick (eds.), PAPERS ON THE SCIENCE OF ADMINISTRATION 156 (New York, 1937).

28. Henderson, Whitehead, and Mayo, *op. cit. supra* note 27, at 157; T. N. WHITEHEAD, LEADERSHIP IN A FREE SOCIETY 91-92 (Cambridge, Mass., 1947); Mayo, *op. cit. supra* note 27, at 165.

tion that the basic fact of our times is the powerful role played by large-scale organizations, especially business corporations. Gradually it has dawned on many modern writers that the label "private" affixed to these organizations merely conceals the fact these entities act in a highly "political" way. It is argued that huge aggregates, such as General Motors, wield power equal to that of many governmental bodies. They command enormous resources, human as well as natural; their wealth often exceeds that of many governmental jurisdictions; their actions affect the lives and welfare of countless individuals; their influence extends deep into national politics and across national frontiers. The conclusion was irresistible: if these entities seemed to act like political societies, they could be studied through the traditional categories of political philosophy. If one were to fix a date for the initial discovery of the political life of corporations, the most likely would be 1932, the year of the publication of *The Modern Corporation and Private Property*. This epochal study by Berle and Means was fully as much a political as an economic inquiry, for it was concerned with the age-old problem of oligarchy which Michels and Veblen had revived in the twentieth century. The problems which Berle and Means set for themselves were essentially political in nature: to trace the growing power of the corporate elite and its emancipation from control by the "constituents," i.e., the stockholders. The analysis proved to be a modern variation on the ancient theme of power and responsibility, of the relationship between those who have authority entrusted to them and those who have entrusted it. In contemporary literature the politicalness of corporations is an accepted datum:

The modern corporation is thus a *political* institution; its purpose is the creation of legitimate power in the industrial sphere. . . . The political purpose of the corporation is the creation of a legitimate social government on the basis of the original power of the individual property rights of its shareholders. The corporation is the *Contrat social* in its purest form.²⁹

In keeping with the discovery of the political element in organizations, recent writers have adopted the conceptual vocabulary of political theory. Terms like "government," "kitchen-cabinet," "final judicial function," "representative institution," "order," "trustees for the community," and "just consent of the governed" are scattered throughout the literature of organization theory.

More important, however, is the marked tendency of late to push the argument one step further and to assert that the traditional political order has been superseded by giant bureaucracies of all kinds, public as well as private. This is most clearly revealed in Philip Selznick's recent work, *Leadership in Administration*. The social world of today, he declares, is centered around "largely self-governing" organizations of huge size. Because of the enormous resources which they command, these entities have an inescapable responsibility, or, rather their governing elites do, for the "well-being of numerous constituents." These institutions are essentially "*public* in nature," because "they are attached to such interests" and deal "with such problems as affect the welfare of the entire commu-

29. PETER DRUCKER, *THE FUTURE OF INDUSTRIAL MAN* 52-53 (London, 1943).

nity.”³⁰ As befits these “political” entities, their governors are to be known as “statesmen” rather than business executives, for they are governing a “polity” rather than a profit-making organization. The claim of these organizations and their leaders to a political status resides in the fact that they are confronting the same type of problems familiar to the life of a traditional political order. “There is the same basic constitutional problem” of accommodating “fragmentary group interests” to “the aims of the whole”; of elaborating statesman-like policies which will “define the ends of group existence”; of ordering internal conflicts by establishing “consent” and a “balance of power”; and of promoting an “ideology” which will give the members a sense of common involvement.³¹ As the profile of leadership takes shape in Selznick’s pages, we find that we have run the full cycle and are back once more with the first of political philosophers: “creative men . . . who know how to transform a neutral body of men into a committed polity. These men are called leaders; their profession is politics.”³²

The large organization has not only absorbed the political order; it has become the vehicle for the realization of contemporary man’s highest hopes and aspirations. Organization spells power — power over nature, over society, and over man; the present age has just begun to comprehend the message preached by Saint Simon more than a century ago that through organized cooperation man can transcend his finitude and challenge God on His own terms, omnipotence. Organization will abolish poverty, anarchy, and class warfare; it will bring within the reach of all the fruits of science and technology. Organization is the twentieth century medium for transmitting the utopian impulse, an impulse which is far from dead and far from being the unique expression of radicalism. For confirmation we need only turn to a sober-minded writer like A. A. Berle. In *The Twentieth Century Capitalist Revolution* he writes that the United States has committed itself to a society dominated by the large corporate enterprise; these units serve as the “collective soul” and “conscience-carrier” of our society. The corporation has become the chosen instrument whereby “we are plotting the course by which the twentieth century in America is expected to produce an evolving economic Utopia, and, apparently, the potential actually exists, bringing that dangerous and thrilling adventure within human reach for the first time in recorded history.” The last chapter of this book is appropriately entitled “Corporate Capitalism and the ‘City of God.’” And faithful to the utopian tradition the author looks forward with satisfaction to the time when “the state is not to be the dominant factor.”³³

The conclusion that follows from this brief sketch is two-fold: (1) the judgment that political theory is dead is premature. In the literature of social science, organizational theory, and business corporations the traditional issues of political theory are being confronted. These various bodies of literature, therefore, deserve the close attention of the student of political theory. (2) It follows that the task

30. PHILIP SELZNICK, *LEADERSHIP IN ADMINISTRATION* 1-10 (Evanston, Ill., 1957).

31. *Id.* at 37, 58-59, 62-63.

32. *Id.* at 61.

33. A. A. BERLE, *THE TWENTIETH CENTURY CAPITALIST REVOLUTION* 174-175, 182-183 (New York, 1954).

of the political theorist today is not to administer artificial respiration, but to preserve the integrity of political theory. Political concepts are being put to use in examining so many nonpolitical groupings — trade unions, corporations, bureaucracies, and neighborhood gangs — that all sense of what is uniquely political is in danger of being lost or obscured. The task, therefore, is not to revive political theory but to rescue it.

SHELDON S. WOLIN

CORRESPONDENCE

To the Editor of the NATURAL LAW FORUM:

I am much concerned about one feature of the review by Professor W. Friedmann of the translation by Judge Felix Forte of Del Vecchio's *General Principles of Law*, which appeared in the NATURAL LAW FORUM, vol. 3, number 1, January, 1958.

As I was in a sense responsible, since I recommended Professor Friedmann to review the translation, I feel that I owe it to Professor Del Vecchio to correct certain unfortunate statements of fact with reference to his political activities and relations with the Mussolini regime in Italy which are contained in the review. He has always been an outspoken and determined Neo-Kantian. The thesis of his book, *General Principles of Law*, has been constantly maintained in his writings. It does not, as Professor Friedmann assumes, represent a return to a doctrine which he had for a short time abandoned.

During the years 1919 to 1921, Italy was seriously threatened by Bolshevism. There were the "Red Tribunals," seizures of factories, and the Fascist movement emerged as a reaction therefrom. At that time Fascism had not developed into a party, much less into a government. Professor Del Vecchio was prompted by love of country and of liberty, the ideals which he has always considered related, and from which he volunteered and took part in World War I (1915-1918), returning to civilian life with two decorations for military valor. It will be remembered that in this war the Italians were allied with the English, French and Americans. When as a prelude to the second World War, Fascism rose to power and took on an absolutist character, Professor Del Vecchio sought to recall it to its original spirit, advocating principles of the purest liberalism. This appears very clearly from his writings. His efforts to prevent degeneration of Fascism unhappily proved vain. They should be credited for their worth. The fact is that he was never given any political office nor was he given the honors which the Fascist government bestowed upon others in the University of Rome. He kept aloof, dedicating himself solely to his scientific work until 1938, when he was persecuted by the Fascists, deprived of his University chair and of his civil rights. It is a great injustice to impute to him the errors committed by Fascism in allying itself with Nazi-socialism and warring against the free nations while he was himself a victim of the Fascist regime while in power.

What I have said is abundantly documented and has been recognized in the United States, for example, by Professor Brendan F. Brown in his preface to *Philosophy of Law*, by Professor Del Vecchio, Washington, 1953.

I am sure Professor Friedmann, for whom I have the highest respect, will when advised of the truth fully approve of my writing this.

ROSCOE POUND

Harvard Law School
June 16, 1959.

To the Editor of the NATURAL LAW FORUM:

I am happy to accept Dean Pound's correction of my — widely shared — assumption that the evolution of Professor Del Vecchio's legal philosophy was connected with his political approval of the Fascist movement. That Professor Del Vecchio's work in the 'twenties showed a transition from neo-Kantian to neo-Hegelian principles I would definitely maintain, with all respect to Dean Pound's different interpretation. Indeed, I do not believe that anybody can read "Justice, Droit, Etat" (1938) other than as a theoretical vindication of the Fascist State. But I never intended to cast any personal reflections on one of the most distinguished legal philosophers of our century.

W. FRIEDMANN

Columbia University
New York, New York.

CORRIGENDA

In the article by Max Salomon Shellens, *Aristotle on Natural Law*, 4 NATURAL LAW FORUM 72 (1959), a number of errors in the Greek appeared, chiefly because certain Greek characters were unavailable at the press. The FORUM is pleased to list the following corrections prepared by M. S. Shellens. All references are to Volume 4 of the FORUM.

page	77 line 2	for τὸν	read τὸ
"	78 line 5	" μή	" μὴ
"	78 note 22	" τὸν	" τὸ
"	78 note 24	" οὐδέποτε	" οὐδέποτε
"	83 note 43	" ὕταν	" ὅταν
"	83 note 44	" τὸ	" τῷ
"	83 note 45	" συνθήκεν	" συνθήκην
"	88 line 5	" ἀπλῶς	" ἀπλῶς
"	90 note 92	" συνθήκεν	" συνθήκην
"	90 note 93	" σύμφερον	" συμφέρον
"	95 line 30	" ισότης	" ισότης
"	96 line 2	" κοινωνία	" κοινωνία
"	96 line 4	" ισότης	" ισότης
"	96 line 5	" ὁμοιότης	" ὁμοιότης
"	96 note 123	" κοινοιοὶ	" κοινωνοὶ
"	97 line 14	" ὁμοιότητα	" ὁμοιότητα