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Book Review. Rodell, F., Woe Unto You, Lawyers!

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struggle among agnostics, materialists, and idealists, with "each major type of philosophy" being regarded as "a partial revelation of reality." The concluding brief chapter on "Scholar and Poet" hardly clarifies matters by such statements as: "A finding of science and a work of art are alike in origin. They are alike in the test of their truth and worth..... The supreme test for what each man reports is the judgment of those who come nearest to sharing his judgment" (pp. 129–30). President Bryan ends his lectures with an autobiographical note in the form of a summing-up of "the chief of what I have seen. I have had sight of chaos and hell, but also, on every side, I have seen the irrepressible emergence of order, reason, beauty, love." It may well be that others will develop further, and more systematically, his notion of human temperaments and their demands as forming something like "families of minds."

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WOE UNTO YOU, LAWYERS! By Fred Rodell. New York: Reynal & Hitchcock, 1939. Pp. xi+274.

The following excerpts from the above book indicate the general tenor of the author's thesis:

Of course any lawyer will bristle, or snort with derision, at the idea that what he deals in is words. He deals, he will tell you, in propositions, concepts, fundamental principles—in short, in ideas (p. 9). Once brought down to earth, once applied to physical facts, the abstractions become nothing but words—words by which lawyers describe, and justify, the things that lawyers do (p. 10). The legal trade, in short, is nothing but a high-class racket (p. 15). Consideration—and every other so-called concept or principle of The Law—amounts to a vague legal way of stating a result, applied to the result *after* the result is reached, instead of being, as the lawyers and judges stoutly pretend, a reason for reaching the result in the first place (p. 55–56). But even when the nine master jugglers [United States Supreme Court] are working at their smoothest, it requires only a trained eye to see that those weighty thoughts they seem to be tossing around are in reality no more than balloons, full of hot air and easily punctured (p. 131). They balance—don't laugh—one set of abstract principles against another and, through some sort of trance-like transference, come out with a specific decision. They take the long words and sonorous phrases of The Law, no matter how ambiguous or empty of meaning, no matter how contradictory of each other; they weigh these words and phrases in a vacuum—which is the only way they could be weighed; and then they "apply" the weightier to the dispute in question with all the finality that might be accorded a straight wire from God (p. 152–53). The sober truth is that the myriad principles of which The Law is

fashioned resemble nothing so much as old saws, dressed up in legal language and paraded as gospel. When Justice Marshall intoned "The power to tax involves the power to destroy," and on the basis of that principle declared that a certain state tax was illegal, he might just as well have said "Great oaks from little acorns grow" and founded his decision on that—except that he would not have sounded quite so impressive (p. 165). The joker in the theory is the assumption that any two, much less twenty, fact situations or legal problems can ever be sufficiently alike to fall naturally—that is, without being pushed—into the same category (p. 169). For if The Law were really the exact and impartial science it purports to be, instead of being an uncertain and imprecise abracadabra devoted to the solemn manipulation of a lot of silly abstractions, none of these bases of inequality and injustice would, or could, exist (p. 245). Since certainty and consistency are impossible of attainment in orderly control of men's affairs, the sensible thing to do would seem to be to go straight after justice in the settlement of any specific question that comes up for solution. Now justice itself is concededly an amorphous and uncertain ideal. One man's justice is another man's poison (pp. 251–52). Every written law—written, you remember, in comprehensible language—might be entrusted to a body of technical experts, to administer and apply it and make specific decisions under it. As the Interstate Commerce Commission applies the Interstate Commerce Act, as the Federal Trade Commission applies the Clayton Act, so each state would have, say, a Killing Commission to apply its laws about what are now called murder and manslaughter (pp. 263–64).

The author has much talent and a facile style. His book has been criticized so adversely that there is little point in adding to this consensus. If his central argument is admitted, one must conclude that any rational adjudication of disputes is impossible. For his espousal of arbitration and decision by experts simply begs the entire question of the bases for such "sound" solution. The book would have aroused little comment had it been written by a journalist; the author is a professor of law, and one is accordingly led to ask whether it is sensible to speak of "obligation" or "responsibility" on the part of legal scholars and, indeed, of educated persons generally. The reviewer answers this question emphatically in the affirmative—if ever there was a time when sound jurisprudence was vital to the preservation of civilization, however understood, the present is assuredly that time. But such terms as "obligation," "scholar's responsibility" cannot be meaningful to the nominalistic, logical-positivistic mentality of the author of this book. It is to be hoped that he will cultivate what common sense he has.

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