Law and the Modern Mind, by Jerome Frank

Daniel James

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bring our own law up to date and in accordance with present
day conditions. To this the reviewer feels like adding his hearty
"Amen."

On the whole and despite certain criticisms which can prop-
erly be made against this book it must be considered to be an
admirable piece of work; it is far more detailed and also more
stimulating than could be reasonably expected from a work of
its comparatively small bulk. To anyone interested in the his-
torical development of our law from any aspect whatever, this
book is more than useful—it is practically indispensable.

ROBERT C. BROWN.

Indiana University School of Law.

Law and the Modern Mind. By Jerome Frank. New York:

"The basic myth" of juristic thinking is that legal certainty
and absolute predictability are somewhat attainable. This myth
is believed by the profession and the laity alike. It has its roots
in "a yearning for something unreal." For an explanation of
that yearning we turn to psychology, which takes us back to
our childhood. There, before our mentality was of sufficient
strength to be skeptical about the expressed thoughts of our
fathers, we found in them the ultimate and absolute. We devel-
oped a father-complex, which we have never outgrown; we have
simply substituted law for father. Unfortunately most of us
are not aware of that complex; hence, the myth: we accept an
untruth—legal certainty—as though it were true, and we do
not know that it is not true.

That legal certainty is not a reality, of course, needs explana-
tion, which is effected by an elaboration upon two quotations,
one from Judge Cuthbert W. Pound and one from Mr. Justice
Holmes. "The decision consists in what is done, not what is said
by the court in doing it. Every decision must be read with
regard to the facts in the case and the question actually decided."
In rendering a judgment a court writes an opinion, usually stat-
ing principles which it says govern and control the judgment;
but the force of principles "lies in the application of them and
this application cannot be predicted with accuracy." In the
functions of fact-finding and applying of principles the indi-
viduality of the judge makes a far greater inroad upon the law-
making process than has generally been supposed. "General
propositions do not decide concrete cases;" and any seeming cer-
tainty apparent in the general principles of judicial opinions is
illusory. The law is what a judge decides as to a particular
situation. This definition of law is "legal realism," as opposed
to "legal fundamentalism" or "Bealism" (after Professor Joseph
Henry Beale), which conceives of law as a "uniform, general,
continuous, equal, certain, pure" system, which is "truly law
even though no court has lent its sanction to many of its prin-
ciples."
Belief in the myth of legal certainty must be exploded. We must remember that it is not a mere fiction, but a myth, which overclouds our sky: we act upon the assumption of a falsity not knowing that it is false. Juristic blindness results. The bench, the bar, the laity must be awakened to the true nature and content of the process carried out by the courts. Only through a lucid awareness of the reality of judicial action can we cope with modern problems and progressively develop.

The preceding three paragraphs are a statement, too brief to be just, of the thesis of Frank's *Law and the Modern Mind*. It is an application of modern psychology to the judicial process. Frank is concerned, more candidly than most juristic writers, with the subjectivity of law—the individuality of judges and of cases. It is well to study what the courts do as an objective phenomenon; but courts are judges, and judges are human beings, with specially trained minds, with environmental backgrounds, with prejudices—with all of the thousand and one uniquenesses that enter into the constitution of a man. A judge has an individuality and he cannot escape from it. Just as surely as it enters into his extrajudicial conduct, it sits with him on the bench. *Ex hypothesi* there must be psychological significance in judicial conduct, just as there is historical, social, economic, logical significance. Frank, in attempting to discover that significance, leans perhaps too heavily upon child psychology and the father-complex. He has a good horse but he rides it to death. As he returns time after time, in almost every chapter, to his father-complex, one cannot help but recall Hamlet’s admonition: “There are more things in heaven and earth, than are dreamt of in your philosophy.”

But the book is stimulating. Whether or not it convinces, it certainly should provoke intellectual action in any reader. And it is readable. Mr. Frank should be commended for escaping that formalistic, monotonous, conveyancing style of writing which unnecessarily obscures a great deal of good thought on jurisprudence. Notes closely related to the text are indicated by asterisks and given at the bottoms of the pages; notes of more remote application or giving mere citations are numbered and relegated to the back of the book, so that one need look to them only if he is interested.

*Law and the Modern Mind* is a book not only for lawyers but also for the more intelligent laity. It should do much to justify the ways of the law to the common man, or at least to show him that many of the faults and weaknesses which he has been prone to consider exclusively those of the lawyer are nothing more than ubiquitous human frailty in the peculiar setting provided by the law.

Daniel James.

Cambridge, Massachusetts.