Law as Logic and Experience. Max Radin. New Haven: Yale University Press. 1940. $2.00.

It seems to be the fate of O. W. Holmes that some of his apercus are being made, not only the starting point, but also the justification of the most untenable so-called "legal" theories. "Law and the Modern Mind" is an extreme case. But also Holmes' dictum that "the life of the law has not been logic, it has been experience," has become the starting point of "legal realism." This dictum of Holmes has been chosen as title by Professor Max Radin to develop once more the doctrine of "legal realism" in his lectures in the Storr Foundation, held in 1940 at Yale Law School.

Radin asserts that it "is experience he is after." But what is this experience? An irrational happening in the life of man, who, we are told, "is by nature an irrational creature that yearns to be rational." This experience which constitutes the life of the law is "not the experience of lawyers but of non-lawyers." The law "has no subject matter of its own, with the exception of procedure." "Legal experience seems to be non-legal experience set in motion by lawyers." If the "ought" is characteristic of the law, what, Radin asks, is "the function of ethics, of religion, of morals"? The lawyer, according to Radin, is not a lawyer, but a "marginal economist" or a "marginal sociologist." Identifying law with the decisions of courts, Radin tells us that not every statement made by lawyers is a legal statement. Only the judgment of the "law man proper," i.e., the judge, is a legal statement.

As the court, according to Radin, is burdened with an impossible task, namely that of reconstruction of an irrevocable past, he prefers arbitration to litigation. What the judge does is to please one side or the other. Why not "produce more satisfaction" by a policy of compromise and appeasement? But in matters of criminal law and civil liberties, arbitration, we are told, would not be the right procedure. And there is no contradiction, because "there is no one key to all legal problems; there is no one method." The lawyer, according to Radin, must be "a logician, an economist, a statesman, a psychologist, a rhetorician, a historian"; fortunately, by way of compensation, the lawyer need not be a lawyer.

This doctrine must lead to the most dangerous consequences. True, the legal "realists" have a romantic leaning for the achievement of a more perfect social law. That is very nice of them. But such
wishes as they have, they must have in spite of their doctrine: for the logical consequences of their own doctrine lead to sheer arbitrariness and tyranny, to the French ideal of the "bon juge" who decides with no regard to the law. Dangerous consequences are not a criterion for judging the theoretical value of a doctrine. For science has only one goal, the research for truth, and in the words of the President of the University of Chicago, the research for truth regardless of consequences.

The doctrine of legal realism is theoretically untenable. It is destructive not only of law, but of the very possibility of law. It leads, in the words of Cardozo, to a "sceptical nihilism which is the negation of all law"; for, to quote Cardozo once more, "a definition of law which in effect denies the possibility of law since it denies the possibility of rules of general operation must contain within itself the seeds of fallacy and error."

It is obviously impossible within the framework of a book review to show in detail the untenability of the position taken by Radin. A few remarks must suffice. There is, first, the fundamental fallacy of identifying law with fact, of considering legal science as a natural science in terms of observable behavior. While law is entirely different from nature as the object of natural sciences, while law does not deal with facts, but with the meaning of facts—and the legal system is a scheme of interpretation of the meaning of facts—, law is not the only normative system regulating human conduct. But—and this answers Radin's question—it is different from other normative systems such as religion, ethics, morals, conventional norms, by its special sanction consisting in its application, if necessary, of physical force as the legal consequence of conduct contrary to that prescribed by a rule of law.

Radin's term "lawyer", and the distinction between the practical lawyer and the lawman, i.e., the judge, is ambiguous. The distinction must be made between the organ of the legal order, whether it be a judge, a court, an administrative official, a legislator or so on, such organ, by no means, necessarily being a "lawyer," and the legal expert, whether an attorney at law or a legal scholar. Such legal expert is not an organ of the legal order, and what he says, can, of course, not be a statement of law, but only a statement about the law. It is, to speak with Kelsen, "of the greatest importance clearly to distinguish between legal norms which comprise the object of juris-
prudence and the statements of theoretical jurisprudence describing that object.”

Radin narrows the creation of legal norms to one figure only, the creation of individual norms by the judgment of courts, wrongly identifying “The Law” with court law. But is an act of congress not a legal norm? And what about primitive legal orders, as e.g., the present international law, which have no compulsory courts? But even by this narrow focusing of all attention to what the judge decides legal realism is leads to a reductio ad absurduim. For why is the decision of a judge a legal statement? Obviously only because the judge is the competent organ of the legal order. How can the realist from observable behavior tell us that a man is a judge? Whether a man is a judge or not, can only be decided on the basis of legal norms. And finally, there is a fundamental fallacy of confusing the objective contents of a court decision with the physiological or psychological processes in the body or mind of the judge. It is as if someone would tell us that Pythagoras’ theorem $c^2 = a^2 + b^2$ is nothing but the observable behavior of mathematicians.

Professor Radin shows himself again in these lectures as a fine scholar, an excellent writer, as a man of profound learning and wit; it is only a pity that so much talent is applied to the defense of a theoretically untenable and destructive doctrine.

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This book presents the six lectures—prepared and published under the dangers of air—and submarine warfare—delivered by Sir Cecil Thomas Carr, the Editor of “Statutory Rules and Orders”, upon the Carpentier Foundation at Columbia University in 1940. They deal with various aspects of English administrative law: a series of lectures, not a treatise. The book shows fine scholarship, a critical mind and sense of humour.

Administrative law has only lately and rather reluctantly been