

The tremendous growth of corporations coupled with the limiting of both federal and state powers by Supreme Court decisions has brought about a critical situation. Mr. Brant believes that the only way to stave off fascism is by giving the federal government power to cope with the situation. He believes that this may be accomplished without constitutional amendment for the grant of sufficient power is in the Constitution, and the people need only elect presidents who will appoint the right men to the Supreme Court.

Mr. Brant is a very interesting writer. One cannot help but be convinced that the framers intended the Constitution to confer great power upon the federal government. The writer's advocacy of the New Deal is never for a moment left in doubt. His statements concerning the Supreme Court show that he is opposed only to those decisions which are not in accord with his particular philosophy. Thus, after a bitter denunciation of the Supreme Court in which he claims that its record of nullifications of federal law is almost a perfect one of economic and social reaction, he admits that it is a possible safeguard against fascism and a valid protection to property rights in voiding confiscatory provisions in farm mortgage and pension acts.

Conceding that the intention of the framers was to give the federal government the greater powers claimed by Mr. Brant, it may be questioned whether their intent is as important as that of the ratifiers. In the case of a statute it is true that the intention of the framers is all-important. But in the case of a Constitution it can be said that the framers are mere agents of the people to prepare the document for ratification and the intention of the ratifiers is all-important. If this view is followed the author clearly demonstrates that the people were misled as to the powers of the federal government.

The book shows that Mr. Brant has done a great deal of research and clear thinking. Whether or not one agrees with his conclusions the book is well worth reading.

CARL R. BULLOCK.

**THE SYMBOLS OF GOVERNMENT.** Thurman W. Arnold, Yale University Press, 1935.

To appraise the depths of Professor Arnold's thinking as expressed in this book one must first understand his approach. As a Neo-Realist, he attempts to convince us of the efficacy of the laboratory method used in the physical sciences as a formula for discovering the social sciences.

The author says that when he speaks of the symbols of government he means both the ceremonies and the theories of social institutions. They are ordinarily studied not as symbols but as fundamental principles of the

separate sciences of law, economics, political theory, ethics and theology. These principles are not to be thought of as truths but as symbolic thinking which conditions the behavior of men in groups.

According to the author, rational thinking is the greatest obstacle to progress in the social sciences. It requires the ideals which our institutions dramatize and the systems upon which our institutions are founded to be logical. If they are not, they lose prestige. This causes us to say that if a result is in conflict with the system it is bad though that result is socially desirable. In the same manner, the greatest progress in human organization is made by men who do not follow such ideals. When one first examines such statements, it would seem that Professor Arnold is saying that the human race is a joke in that they must be rational and therefore, as a result, be socially unprogressive. But what he really means is that, although we must have conceptual and rational thinking, we should not be ruled by it, nor permit it to retard the march of society.

The author dexterously uses his scalpel and probe to lay open the institutions of government. These in progressive order are the "Law," economics and sociology. He also demonstrates the purpose of trial, both criminal and civil, in dramatizing our ideals. He discusses the ideals of a fair trial and law enforcement and shows why they must conflict. He guides us through the maze of thinking that leads staid citizens to grow alarmed at the mention of bureaucracy. He tells why we are having another two-headed system of law as law and equity used to be. These new systems are administrative law representing governmental regulation and our present judicial system representing individualism. This exposure of our institutions is done in such an amusing manner that those who do not take themselves too seriously will find themselves smiling at their own beliefs. The author illustrates his points with experiences from the depression and New Deal periods.

Some of the results of the use of the author's method upon the institution of the "Law" bear special consideration. He sees in "Law," the institution, a heaven on earth for our people. As such it comforts society by letting them believe that if they could only have their rights tested they would obtain justice, whereas, in reality, the "Law" is full of inconsistencies. The "Law" is what judges and lawyers ought to do, not what they really do in deciding and winning cases. This view is sometimes criticized as being nihilistic; such a criticism, however, is overstating the case. This view of the author does demonstrate that the "Law" is not all that it is supposed to be but, at the same time, it does recognize the need for such a concept as long as this concept is kept in bounds and is used as a means and not an end. It merely demonstrates that we should be more empirical concerning the "Law" than we have been.

Professor Arnold sees in the future of the science of government the understanding of these psychological symbols and ideals so that man can be made to be enthusiastic over sensible things. We must find a philosophy of government that will enable men to be free to experiment and give them an understanding of the world undisturbed by principles and ideals, yet not suffering the disillusionment which comes from the abandonment of ideals.

As a conclusion the author abandons his objective viewpoint and takes a sociological view. He sees as the fundamental social maxim of the future society that man obtains the best social results by working for his fellow man and not by working for himself, which has been the fundamental maxim of the past. The rise of this society along with the rise of a tolerant adult personality who can observe the effects of changing beliefs without swinging from complete certainty to complete disillusionment will do away with great class struggles though not with the struggle for improvement. Thus government can be more scientific since government acts in accordance with popular ideals of what a great abstract personality should do. By such a conclusion, Professor Arnold labels himself as an idealist whatever our reaction from the major portion of the book might have been.

This book with its many exposures of governmental institutions is bound to impress deeply, if not shock, a person who has not been following contemporary legal philosophy. The thoughts of the book are not subject to criticism save for the fact that they may at times seem rather jumbled. These thoughts are sound if the laboratory method applied is sound. This method though attempting to be a formula for all formulas is but itself another formula. It is probably not fundamental but is an expression of thinking that is frequently appearing in the writings of current legal philosophers. Probably it will eventually be absorbed as merely another stage of the philosophy of government, law and jurisprudence just as Kant's method of pure reason has been. This method of the author contributes to legal philosophy the idea that philosophies are but the folklore of people's attitudes and thinking of that time, and as such should not be followed as fundamental but merely as psychological reactions of that time. These psychological reactions are likely to carry over in the form of symbols and ideals which will obstruct the new ideas of a later time.

The book should be read by all students and practitioners of the law as it is part of our philosophy of today which opens the road to broader social experiment through law.

JUSTIN H. FOLKERTH.

## RECENT BOOKS

- Crime and Justice. Sheldon Glueck. Little Brown & Co., Boston, 1936. \$3.00.
- Justice Oliver Wendell Holmes, His Book Notices and Uncollected Letters and Papers. Edited by Harry C. Shriver. Central Book Co., New York, 1936. \$3.00.
- Lawless Judges. Louis P. Goldberg and Eleanore Levenson. The Rand School Press, New York, 1935. \$2.50.
- The Story of the Supreme Court. Ernest Sutherland Bates. The Bobbs Merrill Co., Indianapolis, 1936. \$3.00.
- Theft, Law and Society. Jerome Hall. Little Brown & Co., Boston, 1935. \$3.50.
- Mr. Tutt's Case Book. Arthur Train. Charles Scribner's Sons, New York, 1936. \$4.00.