

1946

Book Reviews

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Recommended Citation

Book Reviews, 15 Fordham L. Rev. 150 (1946).

Available at: <https://ir.lawnet.fordham.edu/flr/vol15/iss1/8>

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the ascertainment of the legislative intent to be gathered from the particular charter provision or statute. The *Foley* case, the instant case and the *Murray* case have pointed to the new question to be asked, where a duty is admitted to exist: Is the duty owed to the plaintiff or merely to the public at large?

The practical effect of the decisions in the last two cases is to revive in another and entirely legitimate form the policy of preventing diversion of public funds for payment of strictly private losses. The decision in these cases raises, as to suits against the sovereign, a barrier which has a basis not only in law but which is demanded by public necessity.

BOOK REVIEWS

AMERICAN LAW OF VETERANS. By Robert T. Kimbrough and Judson B. Glen. Rochester: Lawyer's Co-operative Pub. Co. 1946. Pp. xxxii, 1277. \$10.00.

There is an extraordinary number of statutes, federal and state, which provide benefits and privileges for the veterans of the Armed Forces of the United States. Although there has been legislation in favor of the veterans of all our wars from the Revolution down to date, the Congress and the state legislatures did not really get into their stride until the close of the First World War when they produced a body of statutes which even then was enough to overwhelm any individual who set himself to become a competent authority in the field. The latest of our armed conflicts has already produced a formidable number of statutes, regulations, and rulings which repeat for its veterans and their dependents most of the benefits and privileges provided by the laws inspired by earlier wars and which add many new ones.

An examination of the "Table of Sections of the United States Code" cited in the text of the book under review discloses that no less than twenty-eight titles of the Code and above seven hundred of the sections deal with the rights and privileges of veterans, their dependents, and the dependents of members of the services who died in uniform.¹ This will give some idea of the task facing anyone who, without the aid of such a systematic presentation of the law as is in this book, attempts to search out from among the scattered sections of the federal statutes the answer to the question he has in hand. In addition to the statutes of Congress there are numerous administrative regulations, orders, rules, and official opinions which may have to be taken into account.²

1. Appendix A, 4; pp: 992-998.

2. See Table of Abbreviations, p. xxxii. In this connection, to use the words of the footnote on p. iii, ". . . it may be well to point out the difference between the 'Veterans' Regulations', so denominated [which are pointed out in the book in Appendix B, p. 999 *et seq.*], and the ordinary regulations promulgated by the Veterans' Administration [which are not printed in full in this book but are cited to the Federal Register in which their texts may be found.] The former have all been approved by the President and submitted to the Congress or directly enacted by Congress [See 38 U. S. C., 38 CODE FED. REG. pt. 35]. The latter are merely administrative regulations of the Veterans' Administration. For practical purposes, however, even the latter are highly authoritative pronouncements, usually as binding as statutes, since in actual practice the Veterans' Administration is guided thereby and since the determinations of the Administrator of Veterans' Affairs in most matters within his jurisdiction are final and conclusive."

Messrs. Robert T. Kimbrough and Judson B. Glen of the publisher's editorial staff have undertaken in this book to present, in an orderly textual form, the substance of all these federal laws and regulations and many of the orders, rules, and official opinions executing or interpreting the laws. The presentation is in the encyclopedic style of the publisher's American Jurisprudence so familiar to, and so valued by, the legal profession. It appears to be very thorough, comprehensive, and accurate. It is limited to the benefits, rights, and privileges accorded to veterans of World War II, their dependents, and the dependents of those who died in service. After setting out the general provisions and principles governing veterans' benefits³ and describing the administration of the benefits by the Veterans' Administration⁴ in the first two chapters, the authors discuss the nature and details of the benefits under sixteen heads ranging from "Discharge" to "Miscellaneous Benefits, Preferences and Rights." The nineteenth chapter is concerned with "Crimes and Penalties." The work is not intended as a popular guide, but is for those trained in the technique of statutory analysis and interpretation and in the use of legal materials—in short, as the authors say, it is "for the use of attorneys and specialists in the field of veterans' law."⁵

Having been obliged to learn the hard way something about the educational benefits provided by the so-called "G. I. Bill of Rights," this reviewer read with care and profit the chapter devoted to that subject and wished that he had had the book at hand many months ago. Naturally many questions come to a veteran's counsellor to which the answers will not be found in any text, or statute, or regulation, at least until the Veterans' Administration, with its increasing experience in the new fields opened by the loan and educational features of the "G. I. Bill," provides the answers in regulations and rulings supplementing those already issued. But with the text of this book, so thoroughly annotated to the existing laws and regulations and with all the laws collected in the appendices under one cover, he will be greatly aided. One might wish to have in the book, in addition to the compilation of the statutes and "Veterans' Regulations" which are there, the regulations so far issued by the Administrator, rather than to have to check them in the Federal Register or elsewhere.⁶ They are reliably digested, however, in the text and the citations will lead to the originals if one wishes to verify the text.

The general pattern and framework of veterans' laws as now in effect will probably remain intact but of course there will be supplemental and additional administrative regulations. Furthermore, knowing the habits of thought of Congressmen and state legislators and the ways of the organized veterans, it can be predicted with confidence that the end of veterans' legislation is not yet. Like the rest of the taxpayers, the publishers know these things, too, and they have provided a pocket in which to place cumulative supplements which they announce will probably be issued at least semi-annually until such time as the law on the subject becomes "relatively static."⁷ The amendments to the "G.I. Bills" which

3. Such topics as "Eligibility and Basic Entitlement," "Forfeiture, Bar, Suspension, or Termination of Benefits" and "Relationship and Dependency; Definitions."

4. Herein is covered the filing of claims and the practice and procedure with respect thereto and appeals.

5. P. iii.

6. See note 2 *supra*.

7. Publisher's Leaflet accompanying the book.

became effective on December 28, 1945, however, have been embodied in the text, or in footnotes to the text in some instances.

No attempt has been made to present systematically in textual form the laws of the several states relating to veterans—such would indeed be a herculean task. But a check list of subjects and citations of state statutes for each of the states is provided in Appendix C. Two of the more piquant subjects of the state statutes follow:

“Renewal of licenses to practice beauty culture without examination, within 2 years after discharge”. (New Jersey).⁸

“Admission to horse and harness races at half price”. (New York).⁹

I hasten to add for the benefit of veterans interested in improving the breed of horses that investigation discloses that the statute does not apply to veterans—only to members of the armed forces on active duty.

GEORGE W. BACON†

FATE AND FREEDOM, A PHILOSOPHY FOR FREE AMERICANS. By Jerome Frank. New York: Simon & Schuster. 1945. Pp. viii, 375. \$3.00.

To use a phrase coined by William James (and quoted in another context by Jerome Frank himself) this book is one “booming, buzzing confusion”. It presents the kind of eclecticism which would be an *embarras de richesses* if one could be persuaded that any considerable number of the notions juxtaposed between its covers constitute real *richesses*. I am not suggesting that the author addressed himself to inconsiderable problems. Indeed he romps through so many tremendous problems (history, philosophy of history, political science, semantics, sociology, anthropology, psychology, marxism, legal philosophy, Freudian interpretations, Greek philosophy, history of philosophy, Thomism, religion, science, ethics, epistemology, ontology, economics, biography, “scientific acausalism”, natural philosophy, art, formal logic, Adlerism, asceticism, mystical theology, theodicy) that one can hardly be surprised if the treatment is superficial, if glib. Unfortunately, he has failed to learn what Maritain’s mature wisdom has demonstrated—that one must distinguish in order to unify. Repeatedly, the author fails to make necessary distinctions; he goes from one far extreme to the other; from one glaring inconsistency to the next.

His objective is good. He wants to demonstrate that men are free and not the mere pawns of fate; that *homo sapiens* has initiative and is responsible in at least some patterns of conduct. Yet, if ever a man was right for the wrong reasons, it is Frank. For he continually pours out the baby with the bath. Some of his statements are so incredible, some of his conclusions are so shockingly subservient to inconsistency that I am compelled to make many quotations. Otherwise, readers might be tempted to say that this review is gross exaggeration or even misrepresentation.

Here is a quotation that comes as near as any I can find to express the basic principle or temper of this book:

“The realm of art or play is the one place where no one can be harmed by

8. P. 1098.

9. N. Y. LAWS (1942) 1105.

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the absence of conformity. The creative impulse should there run wild. Everyone should be encouraged to express his individuality to the utmost. Abandonment, inventiveness, creation, individual initiative should there be at a premium. There is no call for the slightest degree of regimentation in the arts. Artistic taste ought to be utterly private. Self-indulgence—indulgence in personal whims and caprices, freedom to be as inconsistent as one pleases—should there be our aim. The first principle of art should be that no principles exist except one's own. In play or art, man can find full self-respect, dignity. Competition can be utterly unrestrained, monopolies unknown, regulation eliminated, free enterprise at its maximum. . . . There is no more room for 'laws' of art than for 'laws' of cookery."¹

Of course there *are* laws of cookery. Even play requires rules. Otherwise, caprice might prompt the bridge player to criticize whist because it does not follow the rules of pinochle; or the cook might on occasion use soap-powder instead of farina.

The author calls for the application to art of a ". . . new attitude towards life—one which denies that a neatly ordered and organized universe surely exists—a new attitude which recognizes chance and the capricious."² His book represents this attitude. Certainly one ought to recognize the role or nature of chance and the capricious; it is quite another thing to imply, as Frank seems to at times, that the only alternative to universal determinism (a false philosophy) is chance, indeterminacy and incertitude of principles (an equally false philosophy). Frank betrays small confidence in reason's metaphysical effort. But he has his own incredible metaphysics and theory of knowledge.

For the first five chapters of his book, Frank strained his eyes by reading many histories in order to justify the saw that "history is bunk." Speaking of historians (whom he cites profusely) he says: "Their pretences to accuracy are false pretences. Their books should be labelled not 'History' but 'Twistory.'"³

He quotes with approval Anatole France's hyperbole ". . . that all the historians . . . are narrators of fables." How does Judge Frank proceed to demonstrate that history is twistory? In a naively simple, if startlingly illogical manner: History (true history) proves that all history (that *potpourri* of true, false, probable, improbable, unascertainable declaration or conjecture which is labelled history in our libraries) is "twistory" (bunk).

Frank constantly uses historical anecdotes, *as if they were true*, to bolster or justify his inclusive scepticism. How, for example, can you (in the same chapter which you devote to proof that all history is "twistory") be sure that Madison *was* erroneous in his accounts of the Constitutional Convention and that Farrand *was accurate*? Yet in his preface he insists "that all human interpretations of experience are 'just-so stories' some of which are more plausible, desirable or useful than others."⁴ If all history were homogeneously false ("twistory") practical discussion of the contrast between history and "twistory" would be meaningless. Of course, Frank's common sense triumphs over his skepticism. Often he assumes that certain stories out of the past are true; and by comparison with *them* he criticizes their contradictions as false (for this he apologizes in his preface). For example, see pp. 18, 20, 42, 45, 48, 49, 59, etc.

In the sense of an autonomous philosophy indigenous to the method or data

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1. P. 195.
 2. P. 197.
 3. P. 25.
 4. P. V.

of history, there is no such thing as a "philosophy of history!" What has been so denominated is merely the application to historical materials of genuine or spurious principles or conclusions from philosophy or even from sociology (of which history is, in the view of the great Italian sociologist, Don Luigi Struzo, the time-dimension). Thus a man's philosophy of history is nothing more than the result of a Thomistic, idealistic, positivist, pragmatic, Freudian, etc., outlook on the process of human affairs. Facts and events are consciously or unconsciously strung, like beads, on the lines of one's philosophical perspective. They take on a various significance and structure according as one's prospect of the nature and destiny of man varies. History can only be rescued from being a mere catalogue of man's temporally-connected actions and reactions (what von Ranke seems to have thought it should be) if knowledge and appraisal of man's adventure in time are bonded by ultimate non-historical principles or values taken from sociology, philosophy, or even theology. Otherwise, the path of man through circumstances and temporality becomes a meaningless maze; a random sample of disjointed particularities, neighboring one another in the flux of time, but in the jumbled manner of percepts in a stream of consciousness. Such a stream taken, *tout court*, is allegedly uninterpreted and unselected. Only a consistent underlying philosophy will give it integrated meaning and will focus attention on motives for the kind of selection which it is the distinctive mark of human reason to make. It is the want of such a foundation that makes Frank's book a babel of confused voices.

His "philosophy" of history is puzzling and undigested. Yet, here too, his objective is sound. He wishes to discourage belief in the infallibility of some *conclusions* drawn by historians from the *events* of the past. Characteristically he drives his doctrine to the opposite extreme. He denies *all* "hidden purpose" in history (after iterating and reiterating that we have no history). All talk of trends or historical tendencies is fiction (yet he sets it down that "Communism is today dangerous—as a potential aid to the growth of American fascism.") Finality, in the irreversible process of human events demands, as he believes, determinism! Therefore he rejects finality. He is particularly superficial when he deals with what he calls the "hidden purpose" theory from some of the "theological interpreters" of history.

"It is necessary here to distinguish between two types of theological history writing. The first is the 'interventionist' interpretation, according to which Deity did not plan human history totally in advance but intervenes in emergencies; sometimes this divine intervention is depicted as resulting from man's supplications, sometimes as due to Deity's own unsolicited decisions. The scientific historians spurn history written in that vein. One 'scientific' historian, Henry Thomas Buckle, says that such a view of history 'slanders Omniscience' and is a 'slur' on God, for it implies 'either that Omniscience has been deceived or that Omnipotence has been defeated.' But there is another type of theological attitude: Deity once and for all contrived a world plan and has never thereafter intervened. As Comte put it, God is pictured as a sovereign who reigns but does not govern. Long before the coming of 'scientific' history, much history was written in that manner. It was an easy transition from that type of historical theory to the Inevitabilist thesis of Fichte, Hegel, and our contemporary 'scientific' historians, whether Marxist or conservative."⁵

Of course neither Buckle nor Comte are genuine or competent "theological interpreters" of history. Augustine was; so were many others in the Christian tradition. Despite all the books quoted, not one authentic theological interpreter is used to exhibit the true theological view which is neither "interventionist" (in

Frank's sense) nor deist. It is really a pity that he could not have explained how Aquinas defined "Fate", or how both Aristotle and Aquinas, (who believed in both efficient and final causality) proved that *all* things *do not* happen of necessity: "For some causes are so ordered to their effects, as to produce them, not of necessity but in the majority of cases—due to some hindering cause. Therefore nothing hinders certain things happening by luck or chance, if compared to their proximate causes: But not if compared to Divine Providence. . . ."⁶ Perhaps even more stimulating would have been Garrigou-LaGrange on "Providence" and "Predestination". I am not suggesting that Garrigou-LaGrange or anyone else can penetrate the ultimate intelligibility of the mysterious interaction of human freedom and Divine Grace. But I am saying that the intervention of a Divine Spirit in history can be made much more reasonable than any "faith-ladder" Frank (or the authors he quotes) erects on the foundation of the dogma of the afinity of human history and the acausality of science.

In Chapter six entitled "Psychological Determinism" Frank properly derides the basic, irrational postulates of Marxism and Freudism. Here (as several times throughout the book) he seems to argue that just because we do not know *everything* about something, what we *do* know about it is false. There is a useful, scholastic distinction between inadequate knowledge and error which Frank fails at times to recognize.

Not even so recent a book as this has been able to follow the self-abasing convolutions of Marxist tactics in America. It was evidently written before the Duclos letter, from the present center (Paris) of Comintern intrigue, unhorsed Earl Browder. Frank somewhat diffidently expects an, "editing of Marxist vocabulary, . . . now that Browder . . . has announced that the party will support capitalism and a system of free enterprise!"⁷

In Chapter seven on "Fashion and History" the author is particularly caustic about the notion that any age or culture can be said to exhibit a dominant spirit. Apparently unless he can get mathematical, "scientific," or empiriological certainty, he discredits all certainty. That the "spirit" of an age is not as definite as an algebraic formula is no reason for depreciating the goal and achievement of such masterly summaries as Gilson's "The Spirit of Medieval Philosophy," for example. Such a book might, incidentally, have provided a counterpoise to some of the book's exaggerations and biases about the Middle Ages; like: "The dominant spirit in the Middle Ages was too repressive;"⁸ or that the senses are "vile" according to medieval ascetics; or "baptized bells."

To Part II of the book, entitled "Ascetic Religion and Science," I can summarily refer by adapting (*mutatis mutandis*) Frank's own words on Einstein: That Judge Frank is a good judge and good lawyer endows him with no peculiar virtues in other fields. If one should happen to find that he has a particularly strong liking for Limburger cheese, picnics on a sandy beach, parchesi, green bowties or Bach, we would not be obliged to accept those preferences as "scientific".

Science, he asseverates, "in its inception and in its later growth was nurtured by an ascetic faith—a life-denying religion."⁹ As if true asceticism were a repudi-

6. AQUINAS, *SUMMA THEOLOGICA* (2d ed. 1921) P. I q. 116. (English Dominican Translation).

7. P. 75.

8. P. 212.

9. P. 89.

ation of life! If St. Augustine preached an asceticism of self-abnegation it was not because he was running away from life. It was because he was running toward It. It was a Divine Life which he preferred, to the unsatisfying and transient life of the senses and even of reedy rationalist reason. Frank's linkage of asceticism with science is unique and original. Artlessly he asserts, speaking of certain philosophers of science, that "none of these writers discussed the ascetic component in the physicists thinking, and therefore none of them explained why the physicists' ascetic outlook took hold of the popular mind."¹⁰ If no philosopher of science was impressed with such an original "explanation", I suspect that most such philosophers would deem it too ludicrous for inclusion in a philosophy of science. In any case, Frank's explication in this connection is odd (to say the least) in a context that denies objective validity to the notions of "cause" and "fact". Frank is intrigued or panicked by the difficulty of a completely deterministic science. He seems to fear genuine causality as the inevitable stuff of "The Great Chain of Being", a la Lovejoy. He talks of the "mood of Pythagoras, Plato and Democritus" and asks the reader to "consider the probable psychological origins of that mood!"¹¹ (Why "probable" if history is "twistory" and generalizations on events are so much moonshine?) Then he says:

"All men, at time, experience a mood in which they find these aspects of life distressing. With some men—Plato being typical—that mood is dominant. They find repugnant the multitudinousness of life, shudder at its discords, fear its unruliness. They want existence to be harmonious, patterned; they want it pure, homogeneous, organized, secure; they crave the definite, the consistent, the uninterrupted, the smooth. So they persuade themselves that what they dislike is unreal, only an outward appearance, a false face. Reality, they say, lies behind this mask of 'appearance'. Penetrate this mask, tear it off, and you will discover safety, tranquillity, peace. It is, they believe, through the senses that we receive reports of life as disquieting, restless, chaotic. Those reports must, therefore, be taken as false, and the senses as deceitful. Turn your back on the senses and you will come upon the truth. Negate the seeming world and, in that negation, you arrive at the real. Things are never what they seem. . . . So you draw the fangs of the serpent, take the poisonous sting out of mere 'appearances'.

"This mood, in which one denies the reality of the senses and finds reality through that denial, is the ascetic mood, a mood in which all that we call vital becomes secondary, illusory. In the process of devitalizing and routinizing existence, mathematics, and its sister science, physics, are potent instruments. For they deal with the immutable, the invariant—with perfect order. If those qualities of existence are alone real, then the disturbing variousness of life, its caprices and unpredictabilities, its disjunctiveness and chanciness, can be swept aside as lacking real significance, for they cannot be written down in equations. With mathematical knowledge as the only criterion of truth, the troublesome sense world—the world in which men act and hope, plan and aspire—shows up as false, a nightmare to be disregarded by the intellectual ascetic, the mathematical physicist."¹²

This is what he calls the scientific form of the ascetic mood! The *askesis* of the Greek athlete, elevated by the asceticism of St. Paul and the Desert Fathers, is lowered again to something utterly naturalistic, and Freudianly abstruse: "The founders of modern physics thus sublimated medieval asceticism . . . they socialized, or made socially useful, the medieval ascetic drive."¹³ Apparently a religion which demands asceticism is not socially useful.

10. P. 355, footnote 8, ch. 8.

11. P. 93.

12. P. 93-94.

13. P. 103.

"If you compare the preachments of passionate ascetics (like Augustine and á Kempis) with those of Galileo, the parallel is breath-taking. Withdraw from the senses, for they are ungodly and vile, say the medieval ascetics; peer behind the veil to the reality. Abstract from the senses, look behind them, says the Platonist Galileo, for only so can you comprehend reality. Asceticism and physics have joined once more."¹⁴

He seems not to understand that the object of mathematical physics is not to exhibit the veritable nature of things; but merely to coordinate physical laws discovered by experiment.

"Triumphant physics has supplied the modern world with the very means for which some men of the Renaissance had longed, the devices which can give an abundant life to all men. But, as it has done so under the anti-humanistic aegis of the asceticism which it has reinvigorated, we are, too many of us, dominated by a philosophy of life-negation. We actually fear to use the constructive life-giving potentialities of the machine. Poverty today is silly, yet we dare not do what is needful to abolish it. Our faith has been weakened by doubts concerning the power of the human will to achieve the good life.

"The deterministic-ascetic outlook has had even worse consequences. Its treatment of human values as irrelevant has created paralyzing doubts as to the reality of those values, and has encouraged a perspective which culminates in brutalitarian Nazism, with its life-negating philosophy, its irreverence for the dignity of man."¹⁵

The unravelling of this kind of "logic" is something that had to wait for Frank, who betrays no glimmer of an understanding of medieval asceticism. The medieval ascetics did *not* concentrate entirely on the enormity of sin and its punishment in Hell fire: "Men dwelt on the depravity of human nature. Life in this world became a loathsome thing. . . Every slight pleasure became a vice."¹⁶ Not one authentic Christian writer, old or new, taught such pessimism. Certainly the Christianity and philosophy of Aquinas preserved him from such heresy. For heresy it is besides being bad philosophy. The heresy of Luther and Jansenius, the pessimism that is the other extreme of the silly optimism of Rousseau and the Abbe de St. Pierre.

The first chapters of Maritain's "*Degres du Savoir*" would have saved Frank from such puerile views of the philosophy of science. It would also have taught him some of the fundamental distinctions about contingency and necessity: How, for example, the *event* can be *contingent* while the *law* recognized by science is *necessary*. If Frank recoils from a purely deterministic world (as he should), he runs for refuge to a world of caprice and of chance, which is equally repugnant to free-will. In between these two extremes there are basic distinctions which save human freedom and moral effort from futility. True science does not presuppose the universal determinism of nature in the sense that all events are inevitable and necessary.

"What criterion should one use in choosing between the competing assumptions of causality and acausality, neither of which can be 'scientifically proved'? The criterion of their respective consequences. If the chance 'axiom', with its 'free will' conclusion, aids in promoting the human ideals we cherish, we have the right—still remaining thoroughly 'rational'—to prefer it. In either case, the axiom is a faith axiom, a religious axiom. The acausal faith axiom is more compatible with the ideals of Americans. Let us then adopt it."¹⁷

14. P. 102.

15. P. 104-105.

16. P. 96.

17. P. 169.

How can he prove "scientifically" that we ought to adopt it? In a flagrant misunderstanding of modern physics and of the implications of Heisenberg's principle, he scoffs at the objective validity of causality. If our choice is between such "assumptions" or "faith axioms", why is it more "compatible with the ideals of Americans" to consign all reality and our thought processes to the chaos and irrationalities consequent upon and implicit in a repudiation of real causality? On Frank's postulate we never have the right to ask "Why?" A brooding chance or caprice lies in wait for every "Why?". This is no freedom. This is a smothering incubus of accident, no more desirable than blind, unknowable stoic fate, even on the basis of the criterion of consequences!

Frank seems unaware that Heisenberg had to *assume* the reality of electrons and their motion as the basis for his principle of indeterminism. For the latter stems from the Compton effect, which makes it impossible for us to determine, *simultaneously*, the velocity and location of the electron. If we concentrate on *velocity* position is lost; if we become absorbed in *position* we must lose sight of velocity. From this difficulty Heisenberg concludes to the indeterminacy of the initial conditions of natural processes and to the "uncertainty relation". Now Heisenberg's argument for indeterminism is limited to the field of science and has no valid extension to the philosophy of free-will and ontological causality. Frank makes this invalid extension not realizing that the principle of Heisenberg as such is metaphysically irrelevant. Furthermore, Heisenberg's scientific doctrine contradicts his own and Frank's philosophy of science. Both Frank and Heisenberg seem to hold that the only meaning a scientific concept can have depends on experimental verification. This is the illogical view of the Viennese Circle, of which Maritain wrote:

" . . . if the meaning of a judgment consists in its method of (experimental) verification,—not only in the usage proper to experimental sciences, but in an absolute manner; if any judgment which cannot be thus verified is devoid of meaning, *then* this school's own theory has no meaning, because it is incapable of being verified in this manner. It is incapable, even in principle, of space-time verifications. . . ."¹⁸

Moreover Frank seems to forget that behind all statistical variations (which for him ruin the validity of causation) there are ultimate invariant relations. A true statistical average is a measure of central tendency and the very existence of central tendencies in biology, sociology or electronics bespeaks both law and order as well as causality. Only they are laws and orders whose intelligibility we have not exhausted. Neither Heisenberg nor anyone else has been able to develop the quantum theory in purely conceptional terms: he builds on a basis of electrons, neutrons, positrons, etc.—all of which he has never seen. Their existence he proves only by acknowledging the reality of the causal relation; much as we conclude to God's existence from the existence of produced being.

Speaking of God, Judge Frank advocates a god who is "more democratic"—"a finite God who is still striving to bring some sort of decent order, yet without too much rigidity, out of the excessively unorganized diversity which we find in the universe." Poor, immature, half-finished god! Look behind him, Judge; what do you see? Something dark, disordered, unintelligible, escaping all categories. god's and man's, something bigger than this finite god who tussles with *it*. What is it? Fate—chance—chaos—primal caprice? How did it get there? How long

18. MARITAIN, SCHOLASTICISM AND POLITICS (1941) 39.

will it last? Is it evil? Are we verging into Manicheism? Really, I think St. Augustine was a little better, and closer to American idealism too.

" . . . every fact is 'subjective' in the sense that it is a selection made by human beings constitutionally so limited in their perceptions that they cannot know all that goes on about them. A particular fact of some particular man must be, as we saw, 'subjective' in another sense when his selection is not acceptable to enough other men. If his facts are too discrepant from those of other persons, they may consider him insane or excessively anti-social and put him in any asylum or jail or hang him. If enough other men agree with him, then we call his selection 'objective'—as 'objective' as anything human can be. . . .

"Facts are valuations of experience which alter with variations in men's interests. . . .

"What starts out as some man's tentative guess or theory becomes his hypothesis; if and when he thinks he has verified it, he usually tells it to others; they may accept it as a tentative hypothesis; if a sufficient number of competent persons agree that the hypothesis is reliable, it becomes established as a 'law of nature'. Such a 'law', accepted for many years, becomes a 'fact'. That the earth is round, not flat, and that it revolves about the sun—those are now 'facts.'"¹⁹

I suppose that if enough people believed that the earth is flat (as they once did) the flatness of the earth would be a "fact"!

If a man teaches that there is no such a thing, really, as a *fact*, it is no wonder that he misunderstands nature and the natural law. But I've never been able to see how Holmes' "Cant-Helps" or Burke's "recalcitrance of the materials" is any decently preferable substitute for the "label" (natural law) which Frank deprecates. And why does he deprecate it? Because "the vilest elements in human nature have been repeatedly exalted as 'natural.'" If Hollywood misnames some things as "love" (which saner people call passion or selfishness) do we throw the word away or have any less knowledge of or faith in *genuine love*? Besides, what word is it which cannot be, and isn't, abused?

I would recommend this book to professors of logic or of scholastic philosophy as a thesaurus of nominalist sophisms and a compendium of how not to reason. Yet I lay it down with a conviction that Judge Frank is sincerely after the right things. He is restlessly questing what Augustine sought centuries before—without the perspicacity of the Doctor of Grace. For all his fumbling through too many books, he is a man of good will seeking the good life. May he find its philosophy more successfully some day!

A brimming spirit of such ready tolerance pervades the book that I would have no hesitation about arguing an appeal before Judge Frank the moment immediately after he read this review.

Yet it is onerous and painful to have to write as I do here. If I have learned aught of truth and reasoning from the great Aristotlian-Thomist tradition in which I was educated, I could not say less. Jacques Maritain has, with vastly greater profundity, gone over the whole terrain of difficulties to which Frank exposes himself in this book. To have studied "*Distinguer pour unir ou Les Degres du Savoir*" is to have ruined one's capacity to appreciate such books as *Fate and Freedom*. One good book makes chaff of so many others. The fragile fabric of Frank's "Freedom" affords me no refuge from the pounding of the "Fate" he fears.

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