

Judiciary

Continued from page 21

ship of doctrinal invention in the higher state appellate courts to the mainstream of national judicial interpretation is etched clearly. Similarly, the analysis of the background of the successful invocation of substantive due process in behalf of the emerging modern corporation emphasizes the extent to which an important event such as the dramatic argument of Roscoe Conkling in San Mateo was related to the militant counter-revolution conducted by the American Bar Association against the Jacksonian economic tradition of free enterprise, properly tempered by governmental regulation to insure social responsibility and protection of the public interest. In short, the authors effectively recapture the tone and temper of the competition of ideas which provided a necessary backdrop

to the significant changes in Constitutional interpretation.

The conclusions drawn by Professors Mason and Beaney about the contemporary role of the Warren Court are essentially friendly but not uncritical. They feel that an interpretative policy of "judicial hands-off in economic matters is perfectly consistent with judicial activism to preserve the integrity and effective operation of the political process." The questions raised by the authors are as provocative and insightful as their conclusions in that they properly focus attention not only upon the actions of the Warren Court but upon external developments as well. The answer to their query, "Why should defense of the Court against FDR's attempt to pack it have been so spontaneous, and the Warren Court's outside support, including that of President Eisenhower, have been so ambiguous?" would tell us much about significant trends in our contemporary society.

4. Immutable Principles

By Mark DeWolfe Howe

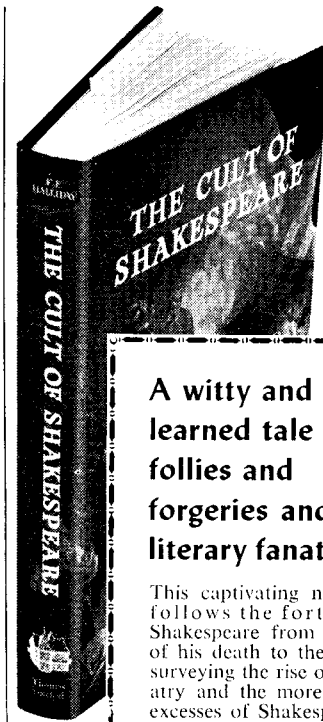
IN "The Complexity of Legal and Ethical Experience," a collection of bewildering and often repetitious essays, F. S. C. Northrop speaks in a tongue and with an accent so unfamiliar to the ears of most American lawyers that what may be wisdom is likely to be dismissed by hard-headed practitioners as pretentious jargon. A critic competent in philosophy and sociology would surely be a more perceptive reviewer than one who does not move easily among such concepts as that of "normative cognitivism" and who cannot find his way through a labyrinth diagram which purports to set forth the true relation between factual, normative, and natural social theory, and which is designed to prove that the segregation cases were "rightly" decided.

From his own level, however, the lawyer-critic may be able to ask some relevant questions about Professor Northrop's elaborate effort to prove that "legal science contains certain principles that are true independent of and antecedent to the positive or living law, and that any positive legislative statute or living law custom which violates these principles is illegal." The first question that such a critic might ask would be historical. Professor Northrop has found it argumentatively useful to force philosophic affiliations upon important Constitutional and legal historians which the victims of force would, I think, quickly repudiate. He constantly charges James Bradley Thayer with a commitment to positivism that

seems almost wholly false. It is unquestionably true that Thayer was an influential proponent of the thesis that the American judiciary in the late nineteenth century had abused its powers to condemn legislation for its unconstitutionality. To convert this Constitutional thesis into a philosophical principle which "equates the legally just with the will of the legislature" is, I suggest, totally to distort Thayer's contention.

A scholar who is eager to fit other men of learning into pigeon holes may either cut the hole to fit the pigeon or wring the bird's neck, pluck the carcass, and push it inside by the main force of intellectual effort. Professor Northrop has overcrowded the compartment reserved for positivists with broken bodies that deserved more respectful treatment. How, one must ask, can the classification of James Barr Ames as an Austinian positivist be justified? Surely his essay on law and morals has more significance than his academic affiliations. When Justice Frankfurter, in his Adler dissent, quite properly asked his associates whether their own decisions were not repudiated when they took jurisdiction to sustain New York's Feinberg Law, his colleagues did not answer the question. Professor Northrop frames his own reply when he states that Justice Frankfurter's question was grounded in the procedural positivism of Harvard and Oxford. The question, however, is still unanswered.

It may be felt that such errors and distortions as those which have troubled and antagonized this reader bear no



A witty and learned tale of follies and forgeries and literary fanaticism

This captivating new book follows the fortunes of Shakespeare from the time of his death to the present, surveying the rise of bardolatry and the more frenzied excesses of Shakespeare devotees. Illustrated \$5.00

"A delightfully written and most agreeable book."

—GEORGE FREEDLEY,
Theatre Arts

The Cult of Shakespeare

by F. E. Halliday

THOMAS YOSELOFF, N. Y. 16



food for the hungry bookworm

The book you're looking for is probably here. Our stock of more than a million puts the odds much in favor of the bookworm. Since 1836 Leary's has provided an outstanding service to America's literary men, and we are proud of our heritage. Dr. Kinsey and Christopher Morley found it that way, and so have many other men of perception. We will give your inquiry the closest attention.

LEARY'S
BOOK STORE

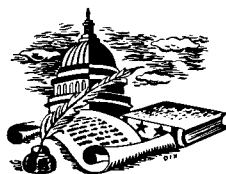
P.O. Box 454, Philadelphia 5, Pa.

significant relationship to the thesis of Professor Northrop, for that thesis is in fact the product of philosophical reflection, not of historical interpretation. Perhaps this is so, yet the author purports to make his starting point the conviction of Holmes that the life of the law has come from experience, not from logic. A critically important part of American legal experience is American legal thought. What seems to be the basic error in Professor Northrop's effort to buttress his beliefs with interpretations of law by others is his failure to recognize that when J. B. Thayer and Justice Frankfurter have spoken of the limited responsibilities of the American courts—and primarily of the Supreme Court—they have not been outlining a legal philosophy but a set of Constitutional principles important to the structure of a Federal Government. It may be that their conceptions of the separation of powers between the courts and the Congress, and between the states and the nation, are mistaken, but criticism is not persuasive—perhaps not even relevant—when it moves to another area of discourse than that on which the conversation started.

IT is possible that Professor Northrop can satisfy the philosophers that sociological jurisprudence is wiser than positivism because its principles validate judicial review of majority legislation. It is even conceivable that speculative minds will accept his further contention that his own cognitive theory of legal science has finally made available to us a process for deciding which statutes are to be sustained and which condemned. Those of us who are unable to identify a responsible positivist who concedes to any state legislature or to Congress the full sovereignty of Parliament will continue to ask whether

sociological jurisprudence, with all its virtues, has those glittering Constitutional merits which Professor Northrop ascribes to it. Those of us who believe that the segregation cases were “wisely” decided will none the less feel that Professor Northrop has failed in his effort to prove that they were “rightly” decided. The complexity of legal and ethical experience is perhaps greater than even Professor Northrop believes it to be.

Having admitted my own incompetence to estimate the value of the author's philosophical achievement, I should doubtless not comment on those phases of his effort which are unrelated to the hard facts of history. I cannot, however, refrain from the expression of a skeptical word concerning one of Professor Northrop's suggestions with respect to legal education. He urges that in this age a law school's curriculum should be extended beyond the narrow confines of the law and the broader reaches of the social sciences “to the experimentally verified theories of mathematical physics.” The proposal, admittedly radical, is favored by the author because of his conviction that the



basic assumptions of a true philosophy of law are those which mathematical physicists have “verified by scientific methods [and] which give results that are the same for all men.” In Professor Northrop's scheme of things, this conviction that law must be based on “what true scientific knowledge reveals both men and nature to be” provides that standard by which an educated citizen

may determine whether a law is good or bad and the Court decide whether it is Constitutional or unconstitutional. Those who have mastered the truths of modern science need no equal protection clause to condemn racial segregation in public schools for they have become convinced “epistemologically and cognitively” that the sensed quality of color is accidental, not essential.

The day may come when all of us will share Professor Northrop's confidence that judges and lawyers educated by law schools in mathematical physics will make the higher law effective. In the meanwhile some of us will stick to our reactionary ways, shackled by scientific ignorance and blinded by the illusion that law must sometimes adjust itself to error—even to falsehood.

Cradle Gift

By George Scarbrough

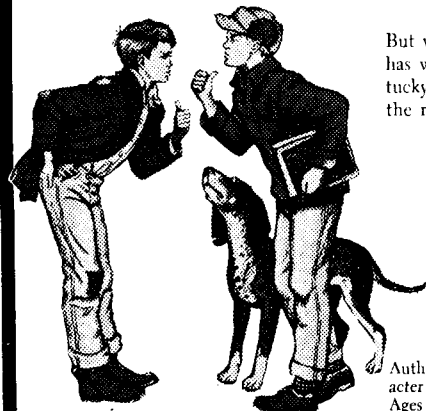
You will sleep in pieces of
Beds and wake in halves
Of houses, Brother John said,
While I endeavored to see
In my small mind beds and houses
Like that. You will play in
Yards too stuffed with players,
Drink from a cup that's bitten
By many, and go undoubtedly
In the chilliness of one sleeve.

So apples now will be
Divided by five and pink candy
In this most literal of all
Democracies become an inch
Of sweetness and an ell
Of longing, Brother John,
Who was not my brother,
Said in his talk to me,
Watching my father go
Back by the other houses.

All because Spencer was
Born he made his speech,
Feeling the top of my head
As if he counted, saying
Things I could not understand,
Naming names and sequences
Until my family seemed a roaring
Landscape of birds moved by
Its own momentum in which no bird
Of itself could fly.

Then he finished talking
And took me in to his table
On which his sister had placed
A red luscious pie. Eat, he said
To me. Eat without cutting. Enjoy.
I lifted the piehole
And ate my way through it,
While Brother John sat down without
Speaking and smiled and smiled,
All because Spencer was born.

"A good hound dog never forgets his master..."



But what can a boy do when he finds a lonely dog, has wonderful times hunting with him in the Kentucky hills, grows to love him dearly... and then the rightful owner shows up?

THE RIGHTFUL OWNER

By Jesse Stuart

Author of *The Beatinest Boy*, *A Penny's Worth of Character* and *Red Mule*. Illustrated by Robert Henneberger. Ages 8-12. \$2.50, now at your bookstore.

WHITTELEY HOUSE • MCGRAW-HILL

Fiction

Continued from page 16

of murder. Then ice the whole thing with as many happy endings as needed. And there you have it—a best seller.

You'll be amazed at how many people this will probably serve. Of course, if you don't want to go to the trouble and expense of following this recipe through by yourself, you can wait for that probable day when the Hollywood Bake Shop decides to produce it for mass consumption. They'll trick it up, of course, with Technicolor and Cinemascope, but don't be fooled by that. It's still the same old crumb cake.

—HASKEL FRANKEL.

OFF-BEATS: For a good many moments in "*Absolute Beginners*" (Macmillan, \$3.75), Colin Macinnes's novel of modern London teen-agers, you find yourself thinking that here, at last, is another Salinger, another "Catcher in the Rye." But just when you are ready to conclude this, the jazz-ridden, motor-scooter, coffee-house language begins to pale, and the novel evaporates strangely and regrettably into an unfeeling tape recording, where obscurity takes over in place of subtlety, incantation moves in to replace candid observation, and a frenetic jangling substitutes for effervescence.

It is not that Mr. Macinnes is untalented or that his ear is not sharply tuned to the rhythm of the teen-age mind and the London scene. He recreates the strange and unpredictable moods and mores of a collection of adolescent Beats competently and sometimes wondrously. His wit is profuse and his satire biting. It's simply that you never really warm up to the blue-jeaned crowd of the protagonist and his friends, the "Wizard," "Crepe Suzette," "Dido," and others with equally bizarre monickers. Their antics, which range from a big Do in a Soho jazz club to a full-scale race riot (they're dead against the Teddy Boys, you'll be glad to know), seem strangely unmotivated.

If Mr. Macinnes were not so talented, the bothersome qualities of the book might not even be noticeable. As it is, one's expectations lunge far ahead of his fulfilment—and the net result is frustrating disappointment.

—JOHN G. FULLER.

OXONIAN CRUSOE: J. M. Scott, author of "Sea-Wyf" and other stories of suspense, is a master of what might be called the modern English adventure novel, in which rugged but gentlemanly types act out the events that John Buchan would be assigning to Richard Hannay if both were still alive. But Scott's

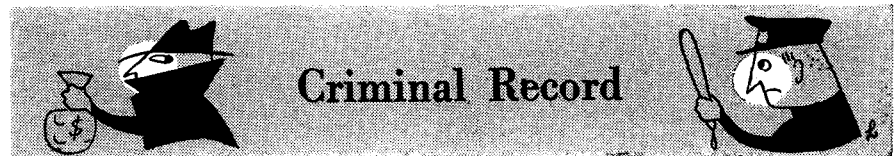
new novel, "*A Choice of Heaven*" (Dutton, \$3.50), is only a good piece of everyday workmanship in this genre. It has a plot full of twists and cumulative climaxes: a vagabond Oxonian discovers an uncharted, pearl-rich South Pacific island, sets out to exploit and colonize it, and runs head-on into another colonizer, an ex-chief clerk in a London firm who is trying to establish an ideal polygynous family on the same island, with himself as husband and some twenty-odd Southeast Asian wives. The novel has a style that is underplayed in the best British tradition; its narrative technique is superb. But what it does not have is deep feeling, and this lack forces one to call the book a journeyman rather than a master job. Because the Oxonian and his rival are only surface sketches, as if they were Conrad characters who had wandered into the pages of *True or Argosy*, the intricately wrought climaxes are sterile

and unmoving, and one must seek enjoyment in the author's considerable powers of description as they range among incidents of small-boat sailing, pearl fishing, and the exploration of a Robinson Crusoe island.

—THOMAS E. COONEY.

LITERARY I.Q. ANSWERS

1. Rachel Wardle in "Pickwick Papers." 2. Miss Pross in "A Tale of Two Cities." 3. Sally Brass in "The Old Curiosity Shop." 4. Lucretia Tox in "Dombey and Son." 5. Miggs, in "Barnaby Rudge." 6. Tom Pinch, in "Martin Chuzzlewit." 7. Mr. Peggotty, in "David Copperfield." 8. Captain Cuttle, in "Dombey and Son." 9. Mr. Jaggers, in "Great Expectations." 10. Newman Noggs, in "Nicholas Nickleby."



BE SILENT, LOVE. By Fan Nichols. Simon & Schuster. \$2.95. Hudson Valley high-school football star's hit-run death puts clandestine lovers in jam and preludes aftermath of violence. Lively oh-what-a-tangled-web job.

KILLING AT THE BIG TREE. By David McCarthy. Crime Club. \$2.95. Strangulation of cotton planter (f.) hands Blair McKenney, newly-elected Southern sheriff, prime problem; lynch threat adds to worries; appealing little black boy is key figure. Sensitive and nicely handled.

MURDER OUT OF SCHOOL. By Ivan T. Ross. Random House. \$2.95. U.S. high-school student (Spanish name) admits pointing gun at grocer; teacher Ben Gordon (a doubting type) toils to free lad; two die before solution. Deftly tied together, and well-paced.

CASE PENDING. By Dell Shannon. Harper. \$2.95. Luis Mendoza, Southern California police lieutenant, trails killer of two women; blackmailed ex-cop active; cases blend neatly. Has warmth, understanding, sound characterization, smooth motion.

GOLDFINGER. By Ian Fleming. Macmillan. \$3. Non-tea-drinking James Bond (good old 007 of British intelligence) tangles with criminal genius by land and by air and gets his man;

canasta, golf, are crucial; map of Fort Knox included. Everything happens in this one—and you believe it.

KNOCK THREE-ONE-TWO. By Fredric Brown. Dutton. \$2.95. Hard-up liquor salesman in nameless U.S. city plots insurance swindle as cops hunt psychopathic killer. Adroit and effective save for over-reliance on coincidence.

THE ENDLESS COLONNADE. By Robert Harling. Putnam. \$3.95. English psychiatrist, on Italian architectural safari, finds self involved with possessor of atomic arcana and deadly enemy agents; amorous interlude a complication. High-grade production, marked by superior handling, excellent grasp of color, background, personalities.

THE BODY IN THE BED. By Stewart Sterling. Lippincott. \$2.95. Latin-American plots and counterplots come too close to home for Gil Vine, security chief of swank New York hostelry; two die. Lively, with interesting slants on hotel operation.

A GRAVEYARD PLOT. By Margaret Erskine. Crime Club. \$2.95. Inspector Septimus Finch takes busman's holiday in snowbound Devonshire to explore *maison à trois* that could trigger murder, and does. Urbane and literate.

—SERGEANT CUFF.