

Thurman Arnold

Eugene V. Rostow†

In gait, cigar and style, Thurman Arnold looked like a leathery old cowboy in a Remington painting, despite his student days at Princeton and Harvard, and his years in the East as professor, government trust-buster, judge and lawyer. He was not, however, a cracker-barrel philosopher, but a shrewd and perceptive social critic in the tradition of Thorstein Veblen—much funnier than Veblen, and much more the man of action.

Arnold had many important and attractive qualities, including a low tolerance of injustice. But the most distinctive feature of his mind was a Third Eye that permitted him to see contradictions and absurdities concealed from most of us by veils of pomp. When the Post Office was trying to suppress "Playboy," for example, Arnold argued as its lawyer that the mission of the magazine was to demonstrate the mammalian character of American womanhood. And, in paying tribute to the eloquence of President Kennedy's famous Inaugural Address, he wondered what exactly is wrong after all with citizens asking their government to do something for them.

Thurman Arnold started life in Wyoming, in 1891, and he spoke and wrote with feeling of "that wild semi-arid country," and its tradition of "exaggeration and individualism" which so strikingly survived in him. Those who knew and appreciated him at Yale or in Washington find it hard to imagine that he was once elected Mayor of Laramie on the Prohibition ticket. But they can easily visualize him, as the only Democrat in the Wyoming legislature, taking one legislative day to nominate himself for Speaker, a second to support the motion, and a third to decline.

Arnold's career was a varied one, but it had two unifying themes: the theory and practice of the American economy, a subject which intrigued him as lawyer, civil servant, and professional observer; and the protection of people against outrage, an activity he pursued with zest in behalf of Ezra Pound, Dr. John Peters, and sundry victims of the laws against obscenity, our mean treatment of public servants, and what he called "the un-American activities of Government Organizations to suppress un-American Activities."

† Sterling Professor of Law and Public Affairs, Yale Law School.

His favorite intellectual method in dealing with both these subjects—indeed with any and all subjects—was a kind of neo-anthropological raiillery, identifying the myths and symbols in terms of which we perceive experience and try to deal with it.

For example, a chapter in his autobiography, "Fair Fights and Foul," compares the criminal trial to an ancient miracle play, a reassuring symbol of public morality. The trial is not an efficient or scientific way of investigating what happened, he argues, but it satisfies a deep need for the appearance of justice, and "presents the conflicting moral values of a community in a way that cannot be done by logical formalization." To illustrate his theme, he discussed the trial of Ezra Pound. Pound was indicted for treason, but trial was delayed while Pound was held in a mental hospital for treatment, since it violates our notion of public morality to try or to punish a man deemed legally insane. It became apparent that Pound was not going to be cured: if he had been tried, he would have insisted on testifying that America's entry into the war was indeed the result of a conspiracy between Roosevelt and the Jews, and that his broadcasts were designed only to save the Constitution. "From the point of view of the philosophical morality of our judicial system, it would have been an injustice to Pound to try him until psychological therapy had cured him of these delusions so that he would not have insisted on testifying against himself." The situation dragged on, an absurdity or worse, until it was resolved by an unlikely combination of Robert Frost, Sherman Adams and Thurman Arnold, through a dazzling series of public statements and legal steps that permitted Pound to be freed without doing violence to the logic or dignity of the law, or unduly embarrassing the Court, the Attorney General, or public opinion.

The most sustained application of these refreshing methods appears in his two early books, "Symbols of Government" and "The Folklore of Capitalism," whose principal subject was economic policy.

In those books he had a field day belaboring the sundry myths, totems and taboos of an ideological and intellectual inheritance which for so long prevented us from understanding or controlling the modern economy. Arnold's forte as a social scientist was not analysis but insight. If his economics were not systematic, nor informed by a grasp of monetary theory, his ridicule was devastating. In this irrational world, perhaps ridicule is more persuasive than the drearier prose of better economists. Arnold did yeoman work in helping to destroy icons of real importance.

But Arnold's basic generosity as a human being prevailed over his

sardonic awareness of the importance of stupidity and nonsense in our affairs.

At Yale, Arnold was a delight. He was vivid and stimulating in the classrooms and law journals; always available to students and colleagues; always kind, always interesting, always demanding. If there was a bitter, jealous, prideful or nasty bone in his body, I never saw a sign of it, nor did I ever hear gossip to that effect, even in the poisoned parlors of Washington.

His devotion to the Yale Law School was profound. The Yale years were a short interlude in his long and active career. But in his mind and spirit, they were the golden years, and the critical years in his formation. Of his many services to the School, I am in a position to note one of great importance. In the stormy middle fifties, when the Law School community was beset by controversy, he helped to heal dangerous divisions, and to restore good relations between the faculty and important groups within the profession. Without that sense of unity and common purpose, it would have been more difficult for the School to surge forward again as a significant force in law.

Thurman Arnold's contribution to law, and to the Yale Law School, was that of yeast, not flour. He did not write many learned articles, full of footnotes, and he was restless on the Court of Appeals. But he asked fundamental questions, beyond the reach of more pedestrian professors. And he posed bold solutions for them. When I was a student, everybody argued with and about him, dissecting his latest idea, enjoying his latest sally, and discovering that even when he hadn't quite persuaded us, he had led us to think about the nature of law, and its relation to the well-being of man and of society. Few fulfilled this first duty of intellectuals more nobly.