

REVIEWS

THE BRAMBLE BUSH. By K. N. Llewellyn. New York: Oceana Publications, 1951. Pp. 160. \$3.50.

THAT Karl Llewellyn has for thirty years chosen to be a professor of law should encourage the rest of us who labor in that tangled vineyard. It has been said that teaching law is better than working for a living: Llewellyn has made it an arduous, varied, exciting business. To whoever was willing to learn he has taught best by the example of his own practice: Never be doctrinaire; Never forget that there are an indefinite number of sides to any argument; Never despise an idea, no matter how imperfectly or tritely presented or from what source it comes; Never be satisfied with any piece of work—yours or another's: it can always be improved; Maintain your ideas with everything you have, but without being dazzled by your own brilliance: you might conceivably be wrong; Always be interested in everything. Karl Llewellyn has brought to everything he has done an intense curiosity about the law as it really is, in each parochial, irremediable detail; an unwavering belief that the function of law is to be the ordering instrument in a rationally conceived society; a profoundly held conviction that the only excuse for studying law-as-it-is is to find out how to do something about law-as-it-ought-to-be.

Llewellyn called his first book *The Bramble Bush* and, autobiographically speaking, named it well: throughout his career he has kept enthusiastically jumping in and out of the brambles, miraculously preserving his eyesight and, many of us will agree, his vision as well. Now, twenty years after its first publication, *The Bramble Bush* is with us again—in its first commercial printing with a few new words added for the occasion.

These were lectures on “Law and its Study” delivered—no doubt inimitably—to the class which entered Columbia Law School in 1929; today they would be called An Introduction to the Study of Law. In part narrowly pedagogical—how to brief a case—in part broadly jurisprudential—what *is* the law?—they are all informed with Llewellyn's infectiously exciting and only occasionally irritating personality. They are alive with the buoyant optimism which their author felt as he stood, quite consciously, at a decisive turning point in American legal thought and happily surveyed the future.

We have worried for years about exactly how to “introduce” students to the law. For simplicity, strength and elegance none of us will improve on the Red Queen's handling of the matter between Alice and the plum pudding. “Student,” we might say, “here is the law; law, here is the student. Remove the student.” Indeed that is all we can usefully do; the formalities and elegances we attempt fall on thorny ground. Generalities about the nature of law do not make good baby food. That we do worry about the niceties of the introduction gives us away: we are no longer socially—or legally—sure of ourselves.

As an Introduction to the Study of Law, Llewellyn's lectures were no better and no worse than any of the inferior Introductions which clattered in their wake. That is to say: the neophytes understood one word in twenty—or thirty—and that word imperfectly, or in any case got it incorrectly down in their notes. Today the lectures have a nostalgically old-fashioned sound: bright echoes from a vanished past.

Nevertheless *The Bramble Bush* remains an enormously interesting book. It is also an historical document of importance.

If we were talking of a literary movement, we would say that *The Bramble Bush* was the first coherent manifesto of the realist or functionalist school. Realism and functionalism were fighting words in the thirties and took up as much space in the law reviews as articles on how to teach law do today. Llewellyn was not the First Realist or even one of the Great Artisans of Realism: he came in the second generation, but shortly emerged as the most active spokesman for the new school.

The Bramble Bush, as manifesto, tells us that the law is not a self-contained set of logical propositions; that rules of law do not explain results at law; that the stated reasons for decision regularly mask the inarticulate major premise; that facts are slippery things with a nasty habit of changing shape and color, depending on who is looking at them; that judges are not automata who announce the law but human beings, possibly neurotic; that juries are barely human; that the truth is not in the law books, which should nevertheless still be studied; that we don't quite know yet where the truth is, but it is somewhere—in economics, or sociology, or anthropology, or psychology, or in the murky reaches of Freudian theory.

These ideas no longer excite us, which is more our good fortune than their fault. They are the ideas which destroyed classical jurisprudence. They are the ideas which set us free. They are ideas which have served their time and passed out of controversy. They may now take their place alongside the theory that the earth is round and Harvey's quackery about the circulation of the blood.

Legal Realism was a destructive movement. We stand amid the wreck and ruin of a jurisprudence which cannot be rebuilt. But the Realists gave us nothing to put in the place of what they destroyed. Their confident optimism that the thing to do was to "integrate law with the social sciences" has proved ill-founded. Some of those who chased the will-of-the-wisp through what used to be called "related disciplines" may have become more learned; no one became any wiser.

At twenty years distance we may with the prescience of hindsight pass judgment. Llewellyn and his co-conspirators were right in everything they said about the law. They skillfully led us into the swamp. Their mistake was in being sure that they knew the way out of the swamp: they did not, at least we are still there.

The Bramble Bush is far from being all literary manifesto or advice to law students on how not to flunk out of school. What comes through best—and what must have got through to the entering class at Columbia in the days when the bull market lay dying—is Llewellyn's own feeling that the law—studying law, practicing law, teaching law—is a vital, creative, exhilarating affair which will reward the best efforts of the best minds that will apply themselves to it. My own thought is that at the end of the first term all law students should be asked one question: those who answer that the law is a dull thing should, after reading *The Bramble Bush*, be given another chance: if they fail a second time they should be expelled forthwith: they are hopeless. There are many easier ways of living, even of making a living, than practicing law: like the aesthete in his garret, any lawyer should expect to work long hours for meagre rewards and no public acclaim. But anyone who cares to know why nothing in the world can be so much fun can do no better than to read these lectures.

After *The Bramble Bush* Llewellyn rode off in all directions. He wrote a classical series of articles on commercial law, taking fliers in constitutional and criminal law as breathers. He drafted the Uniform Trust Receipts Act, whose appalling difficulties of construction are matched only by the Act's essential soundness: the Act has worked, and worked well, although no one knows how or why. In collaboration with an anthropologist, he produced a fascinating study of the law of the Cheyenne Indians. For the past ten years he has been the Chief Reporter for, and the principal architect of, the now completed Uniform Commercial Code.

We may hope that Llewellyn after his twenty years in the brambles will now return to his first love. It is high time for all of us—law professors, lawyers, law students—to get back to first principles. Few are as well equipped to guide us as the author of *The Bramble Bush*.

GRANT GILMORE†

COLLECTIVE BARGAINING. By Neil W. Chamberlain. New York: McGraw-Hill Book Company, 1951. Pp. vii, 534. \$6.00.

HERE is a penetrating and analytical exposition of the collective bargaining process. Narrow in scope but intensive in treatment, this volume contains some helpful theoretical apparatus and some original insights. The volume is also significant methodologically, for Professor Chamberlain has taken a long stride toward the integrated inter-disciplinary approach so badly needed in the social sciences.

What is the nature of the bargaining process? Chamberlain delineates three views which, while not mutually exclusive, merit differentiation: a method

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