

## MARGINAL NOTES

WHAT PRICE PHILOSOPHY?—Plato in his *Theaetetus* painted the lawyer with an unfriendly brush. The man whose daily job compels him to be “knocking about the courts, and such like places,” is always in a hurry “with the water of the clepsydra driving him on”. Confronted by his adversary, tied to the matter of his brief in argument, controlled by the Judge, “from the first he has practised deception and retaliation, and has become stunted and warped. And so he has passed out of youth into manhood, having no soundness in him; and is now, as he thinks, a master in wisdom. Such is the lawyer, Theodorus.” And so in Plato’s opinion the lawyer is not of the stuff whereof philosophers are made. But in the course of his debates in dialogue Plato does not always make Socrates and his companions confine themselves to lifting the veil on the eternal verities. Doubting, as he did, of the capability of man to make of this earth the best of all possible worlds, he could make merry at times over the failure of the philosopher himself to relate his conduct to the stern requirements of life. An instance of this can be found in the same work in which we have the above unflattering delineation of the lawyer. There Socrates quotes the jest of the Thracian handmaid at the expense of the philosopher Thales, who she said fell into a well as he was looking up at the stars. He was so eager to know what was going on in heaven, that he could not see what was before his feet. “This, said Socrates, is a jest which is equally applicable to all philosophers. When the philosopher appears in a law court, or in any place where he has to speak of things which are at his feet and before his eyes, he is the jest, not only of Thracian handmaids but of the general herd.” Then again, this contemptuous reference to the mass of his fellow-men as “the general herd” reveals Plato’s alienation from the standards and institutions of the Athenian democracy of his day. He was averse from condescending to men of low birth suddenly elevated to high estate. His ideal society would be that of a select and trustworthy body of *equals* ruling, as guardians, over the mass of inferiors and slaves. In his *Republic* only the guardians entrusted with the functions of government would live communally, owning no private property and so fortified against self-regarding conduct tending to prejudicially affect the well-being of the State. The remainder of the population would consist of two classes, soldiers and workers, the former class being charged with the duty of guarding the safety of the State, and the latter with that of supplying its material

needs. This specialization of function for classified groups in the community is the very negation of democracy, which, to quote the ironical words of the author of the *Republic*, "is a charming form of government, full of variety and disorder, and dispensing equality to equals and unequals alike."

It is obvious that Plato would look with disfavour upon the administration of justice in Athens which was mainly conducted by amateurs. There was, it is true, a system of legal procedure but there was no organization of the legal profession in his day, and no legal training. The judges were chosen by lot from among such of the ordinary citizens as offered themselves for temporary service on certain magisterial boards and tribunals. From the decisions of these bodies appeals might be taken to the *Heliaea*, which was composed of a huge number of citizens all nobly free of law learning. A panel of 501 members was required for the hearing of appeals in public (criminal) cases, and a panel of 201 in private (civil) cases — the odd number being necessary for the avoidance of an equality of votes. There were no public prosecutors as in our modern legal systems, the Athenian law permitting, and indeed encouraging, every good citizen to prosecute evil-doers. As in certain types of action a liberal percentage of the fines levied went as a reward to the prosecutor it came to pass in time that even the bad citizen became zealous in forwarding litigation. The *sycophantes* (fig-blabbers), who prefigured the tribe of modern shyster lawyers, were brought into being by this system of rewarding prosecutors. Add to all this the fact that during the trial of Socrates, for impiety, Lysias, a lawyer with whom the accused was on friendly terms, prepared a speech for the defence which Socrates felt he could not use because it was "more forensic(!) than philosophical," and we have some understanding of Plato's poor opinion of the ability of the lawyer to drink deep at the fountain-head of 'divine Philosophy'.

\* \* \* \*

A PRACTICAL PHILOSOPHER.—We have spoken at some length above of Plato's unflattering evaluation of the lawyer as a candidate for admission to the brotherhood of philosophers who espouse the theory of Ideas as the proper and only means of apprehending the eternal verities—to know which is the ultimate achievement of man's search after wisdom. It is, therefore, a pleasant thing to turn from the contemplation of a philosophic field to which the lawyer of Plato's day was held to be incapable of access and concern ourselves for a moment with the consider-

ation of a book recently issued from the press<sup>1</sup> which expounds the teaching of a philosopher who would agree with Milton when he says :

To know  
That which before us lies in daily life,  
Is the prime wisdom,—

and whose philosophy on its more practical side seeks to elucidate matters of weighty importance to lawyers of our own day.

Our author, who is accredited to his readers by the fact that he holds the chair of Philosophy in the University College of Wales, declares that his first aim in producing this book is to present a sound exposition of Locke's writings, and frankly confesses that the task he has set himself is not an easy one. There are certain features in Locke's method of presenting his views that combine to make it difficult to attain clarity in expounding them. Owing to this fact some earlier commentators have yielded to the temptation of seizing upon some well-defined position assumed by the philosopher, and then proceeding to show what he ought to have said in its elucidation if he had been consistent, neglecting, however, to show what he actually did say. Professor Aaron expresses the hope that he has avoided this off-hand method of exposition which "has led so frequently in the past to a falsification of Locke's philosophy."

The book under review is divided into three parts. In the preparation of Part I, which recites the story of Locke's life from boyhood to maturity, the author states that he had been particularly helped by materials found in the Lovelace collection of Locke's private papers, only a small part of which was available to Fox Bourne when he wrote his *Life of John Locke* in 1876. In the same portion of the work Professor Aaron also discusses the main influences which shaped Locke's philosophic thought, especially emphasizing the influence upon him of Pierre Gassendi, the French philosopher, whose *Exercitationes paradoxicae adversus Aristoteles* appeared in 1624, and who subsequently became known as a formidable critic of the system of philosophy propounded by Descartes. Locke's debt to Gassendi has singularly escaped the notice of our historians of philosophy, and Professor Aaron has performed a useful service to his readers in pointing out the extent of the debt. Locke is heralded by one writer, whose book lies before us at the moment of writing, as "the first of the empiricists," but the fact is that Gassendi, after

<sup>1</sup> JOHN LOCKE. By R. I. Aaron. Toronto: Oxford University Press. 1937. Pp. ix, 328. Price 12 s. 6 d. net.

subjecting to critical scrutiny the scholastic philosophy predominant in his time, firmly revolted against it and proclaimed experience as the only basis of knowledge. In doing so he clearly anticipated Locke as an exponent of what is known in modern times as empiricism.

Oddly enough, in view of the part played by Gassendi in the moulding of his mature philosophic thought, Locke in his younger days had drunken deep of the well of the Schoolmen, and it required infinite pains on his part to detach himself from their subtleties. Professor Aaron, after stating that his terms and his central conceptions were derived from Scholasticism, and that he "took over bodily its logical framework, its modes, its essences, its genus and species, its universals and particulars," proceeds to say that while he eventually broke away from Scholasticism, Locke did not start wholly afresh as an exponent of philosophy. "He built on the traditional foundation bequeathed to him by the schools." Indeed our author admonishes us that the problem of Locke's indebtedness to Scholasticism is one for the mediaevalist and much remains to be done before the measure of that indebtedness can be established. He enquires: "What for instance, is Locke's relation to Aquinas, to Nicholas of Cusa, and, most interesting of all, to William of Occam?" This stimulates this reviewer to suggest a further enquiry as to the debt of Locke to earlier leaders of thought, and it relates to the theories respecting Sovereignty and Popular Rights as he treats of them in his tractates on *Civil Government*. In the *Vindiciae contra Tyrannos*, a work appearing before the date of Locke's political writings and attributed by some to Languet and by others to Du Plessis Mornay, are to be found anticipations of the ideas about popular sovereignty espoused by Englishmen from the sixteenth century on. The doctrine of the "social contract" appears there, and, while differing somewhat in detail from the character of the agreement between King and People as expounded by Locke, is in substance the same. The argument for the existence of the compact and the reasonableness of the doctrine is *utility*. Concerning the argument Dr. Figgis (*Divine Right of Kings*, Chap. VI, p. 114) says: "It is contended, just as in the manner of Locke, that the King can have no power over either the life or the property of his subjects, for it is contrary to the principle of utility for men to give power over their life or property into the hands of another."

Professor Aaron declares that while Locke's works do not disclose any evidence of detailed study of the Greek authors,

it is clear that he had studied Cicero, especially as a critic of a materialistic philosophy of life. *En passant*, we point to this fact as a pleasant counter to Plato's assumption that philosophy and the lawyer are mutually exclusive of contact.

Part II of Professor Aaron's work is devoted to an exposition of the famous *Essay Concerning Human Understanding*, and in his discussion of Locke's elaborate attack upon Innate Knowledge as exhibited in the *Essay*, our author takes pains to show that while Locke was indebted to Descartes for the theory that knowledge is essentially intuitive, and that he joined with the French philosopher in using the *cogito ergo sum* argument, in many respects his theories controverted rather than coincided with those of the Frenchman and his school. On this point we commend to our readers a careful reading of the portion of the book entitled "The Polemic against Innate Knowledge."

Part III treats of Locke's teaching on morals, politics, education and religion. We have already mentioned a subject within the domain of political theory as well as of constitutional law — Sovereignty — which was handled by the Whig philosopher to the detriment of the devout but now extinct race of worshippers at the throne of absolute Kings. We should like to enlarge upon it, but as we have exceeded our space limits we must now put aside Professor Aaron's attractive and learned book with a hearty recommendation of it to the legal profession.

CHARLES MORSE.

Ottawa.