great majority of cases decisions can be put upon other grounds with much less likelihood of confusion and seeming conflict.

The theory expounded in this text is perhaps only superficially out of harmony with the statement by Justice Holmes in *Donnell* v. *Herring-Hall-Marvin Safe Company.*[9] Professor Stevens does not deny that recognition may properly be accorded the entity concept—or its substantial equivalent—in certain cases and for certain purposes. Justice Holmes said: "Philosophy may have gained by the attempts in recent years to look through the fiction of the fact and to generalize corporations, partnerships and other groups into a single conception. But to generalize is to omit, and in this instance to omit one characteristic of the complete corporation, as called into being under modern statutes, that is most important in business and law. A leading purpose of such statutes and of those who act under them is to interpose a nonconductor through which in matters of contract it is impossible to see the men behind." [10]

In any event, it is true that actually the courts have refused always to apply the dictum that "it is impossible to see the men behind". What the author has done in this work is to point out how it is legally and logically possible "to see the men behind" the corporation and to decide accordingly without resorting to an abstraction which, in itself, explains nothing.

The book will be useful to students, teachers, lawyers and judges alike, and represents a scholarly and valuable contribution to the literature of the law.

SVEINBJORN JOHNSON.*

THE INSTITUTION OF PROPERTY—by C. Reinold Noyes. Longmans Green & Company, New York, 1936. Pp. viii, 645.

This book has defied brave attempts adequately to summarize its content in the limited space of a review. It is an encyclopedic exposition of "the institution of property" beginning with the prototypes and "strains" of property in prehistoric, pre-legal and "pre-property" eras. The evolution of property is elaborately traced through Roman society and the English federal system, it is examined in the light of the Modern Juristic Analysis of Property, and its status depicted and analyzed as it appears in "the practical law of today in the United States".[1] In the light

[9] 208 U. S. 267, 28 Sup. Ct. 288 (1908).

[10] 208 U. S. 267, 273; 28 Sup. Ct. 288, 289 (1908).

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[1] P. 285.

of these studies the author ventures a summation and restatement of the Substance and the Structure of Property with diagrammatic presentation of the network of the " institution " and a new nomenclature.

Mr. Noyes avowedly restricts his study to the " structure " of the " institution ", as distinct from its " functioning "—to the " anatomy rather than the physiology ".

The author's research and analysis in his first three chapters, depicting the prototypes and early " strains " of the idea of property are both brilliant and appalling—brilliant and appalling for their comprehensive scope and the thoroughness with which he marshalls his authorities upon the details of his theses.

While the author relies heavily upon the devices of an etymologist in reconstructing this ancient climate as to the property-idea, his own admonitions of the hazards of semantics promote confidence in the integrity of the author's methods as well as of his conclusions.

In his concluding chapters upon the Substance and Structure of Property, the author goes " economist ", undertakes to " define " many things with seemingly little provocation, and by process of defining makes some simple things difficult and abstruse. Thus, the author undertakes the burdens of defining " credit-debts " and of distinguishing them from " all other contractual rights," as follows:

> " It seems that the term ' credit-debt ' should be limited to cases of unilateral contracts where a property right, arising from a promise, express or implied, comes to exist, which should result in the transfer by the promisor, or promisors, of an ascertained or readily ascertainable sum of money, or other property of determined value, equivalent to the disequilibrium created by the failure of the promisor to perform, and due at a time certain or on demand; or to cases of bilateral contracts, after full or part performance by one promisor, where a property right, arising from a promise, express or implied, comes to exist which should result in the transfer of an equivalent *pro tanto*, measured by the disequilibrium due to the deficiency in performance by the other promisor or promisors, in the form of a readily ascertainable sum of money or other property of determined value and due under above conditions; or of imposed, or quasi-contractual, obligations assimilable to the foregoing." [2]

And property under one of his definitions is as follows:

> " Property is any protected right or bundle of rights (interest, or ' thing ') with direct or indirect regard to any external object (*i. e.*, other than the person himself) which is material or quasi-material (*i. e.*, a protected process) and which the then and there organization

[2] Pp. 332-333.

> of society permits to be made the object of that form of control, either private or public, which is connoted by the legal concepts of occupying, possessing or using." [3]

But these represent the author at his worst.

The book should be read by all law school instructors and administrators not only for its exposition of "property", but also for a very real side light which is of significance to them in connection with certain promotions now in process in legal education. I rely heavily upon the fact that the author fully qualifies by his brilliant work as an expert authority on "economists", (especially many of those who live around the corners at University Place). His first chapter is sufficient authority as to how narrow and inconsequential "economists" have made their "science of economics". The author forsakes his traditional brethren and aligns himself with the faith of "institutional economics"—which has "first become self-conscious in the twentieth century". Economics is part of the science of human behavior, the economic organization of society is an institutional constituent of the social institutional constitution, and the institution of property is the vital institution and framework of economic organization. Hence knowledge of the institution of property is vital to an adequate science of economics. But "economists" have never studied this institution either as to its "structure" or its "functioning"; they know little or nothing about it—and seem to care little about it. In short the "major school of economic thought" is and has been comparable to the physiological chemist, who puts aside "the factor called life and examines the whole subject in its physical (including mechanical) and chemical aspects; as a system of levers, pumps and fluids; as a system of energy, heat, and perhaps electricity". The "economics" of our prevailing texts is summarized by the author, as follows:

> "For the first part of the subject it [classical economics] has merely assumed a lay figure—the *homo economicus*—to fulfill the need of a foil for the attributed and very simple set of wants, efforts and satisfactions which it has required as putative motive power for the mechanism—a mere catch-all concept like that of 'force' in physics. For the second part it has been content with a simple functional analysis—of the order of air, fire, water, earth—which originated in a landlord-farmer agricultural economy, and therefore contained three elements, land, labour and capital; and to which has been added, in order to offer some concession to the realities of the last century, the fourth function of enterprise. But the part of the subject to which classical economics has largely devoted its attention and that in which its successes lie, is

[3] P. 436.

> the mechanical. It has produced a mechanics of production—dealing with the processes by which the various chemical (or alchemical) compounds are produced from this air, fire, water and earth; a mechanics of exchange—dealing with the processes by which the resulting compounds interact upon each other; and finally an over-simplified rationale of distribution—the beginnings of a scientific approach to the subject of economic metabolism." [4]

And so it is that, in 1936, this author undertakes to labor with "economists" and to vitalize to them the social and economic significance of property and their professional obligations to know about it. In the A B C's of "economists'" language, he tells them that they should understand the institution of property as comprehending more than merely "the concrete persons and the concrete objects" with which they have been content to be concerned in the past in the prosecution of their "science" of economics: that the institution of property must be recognized as including the "social abstractions which lie between" concrete persons and objects; that these abstract relations "depose the relata from their pre-eminence as facts"; that these relations are the realities of the business and financial structure, "as they have long been of the law". In short, the author adroitly urges upon his brother "economists", what has long been elementary to lawyers, that

> "The chips in the economic game today are not so much the physical goods and actual services that are almost exclusively considered in economic textbooks, as they are that elaboration of legal relations which we call property." [5]

Such is the elementary epistle of a learned man to "economists" —written A. D. 1936! And there is a moral for legal education in all of this. There is no little commotion among law professors and deans about the "correlation" of "law" and "economics". It is proposed to have "economists" do their stunts in "economics" in an amalgamation with the instructors of "law". The pressure has become so acute at times that one would have lacked prestige and efficacy in attempting to take up with a class in law school the searching qualities of demurrers or the distinctions as to "frivolousness" and "sham" in motions to strike, unless one had at least "a plan" whereby an "economist" might participate in the work. The passion for "correlating" has become so intense and promiscuous that any old economist will do. It is hoped that legal education may be saved from the limitations of "the major school of economic thought", and saved from the

[4] P. 7.
[5] P. 2.

burdens of educing its victims from those limitations. The author, unwittingly in part perhaps, makes a genuine contribution to legal education by making manifest, if not the airpockets in the impending flight of legal education to " economics ", the character and qualities of the landing.

WESLEY A. STURGES.*

BANKRUPTCY IN UNITED STATES HISTORY—by Charles Warren. Harvard University Press, Cambridge, 1935. Pp. 195.

This little volume, the second of Professor Warren's [1] contributions in 1935, is an amplification of the lectures delivered by the author at the Law School of Northwestern University, in November, 1934, on the Julius Rosenthal Foundation. No claim is made that it is a history of bankruptcy in the United States. As the publisher's note states, the author has examined each of our previous periods of economic depression by way of the vigorous debates on bankruptcy that have stirred the various Congresses at such times, and has found that one of the striking features of them all has been the increase in the scope of the demands for relief through the exercise by Congress of its power under the bankruptcy clause of the Constitution.

Professor Warren has divided his material into three parts, as follows: I, The Period of the Creditor, 1789-1827; II, The Period of the Debtor, 1827-1861; and III, The Period of National Interest, 1861-1935. Throughout these periods, he finds that four things stand out. These are, in his words,

> " first, that every bankruptcy law has been the product of some financial crisis or business depression; second, that from the outset the divisions in Congress over such laws have been largely sectional; third, that there has been a persistent and continuous opposition to a compulsory or involuntary bankruptcy law; and fourth, that, until the decision on May 27, 1935, in the Frazier-Lemke Act case, no decision under the Bankruptcy Clause of the Constitution has ever failed of support by the Supreme Court." [2]

In the development of his material, Mr. Warren, unfortunately, has seen fit to pay but scant attention to what has actually happened under the bankruptcy laws. Rather he views the subject in

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[2] P. 9.