1938

The Folklore of Mr. Hook -- A Reply

Thurman W. Arnold

Yale Law School

Follow this and additional works at: https://digitalcommons.law.yale.edu/fss_papers

Part of the Law Commons

Recommended Citation

Arnold, Thurman W., "The Folklore of Mr. Hook -- A Reply" (1938). Faculty Scholarship Series. 4251.
https://digitalcommons.law.yale.edu/fss_papers/4251

This Article is brought to you for free and open access by the Yale Law School Faculty Scholarship at Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship Series by an authorized administrator of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.
intellectual worker and professional who make a career in public service or the business of government,—a group which regards itself as independent of other classes, in fact as a special class whose function is to mediate between others. It constitutes the permanent staff of officials who observe with amused cynicism or resentful irritation that the more things change (in ideology) the more they remain the same (in practice). In periods of relative stability, it is content to identify its interests with those of the dominant group in the economy. In effect, as Arnold himself observes, that is the function of all government, in ordinary times, despite its mythology of universalism. In periods of transition, however, where social tension becomes so great that it threatens the prestige and security of the dominant group in the economy, and with it the tenure, power and privileged routines of the masterful servants who always imagine that they rule behind the scenes, a dissociation of interests takes place. If the dominant group adopts an intransigence which bids fair to carry the public servants (bureaucrats or political engineers or technicians—you may take your choice) down to a common ruin, the latter look around for a "leader" who can save what can be saved. In the last resort this means a kind of Bonapartism. But if the leader can serve as the symbol of the vague aspirations of the dissatisfied multitude, as a symbol of distrust of the old myths and acceptance of the new, he can more easily do the practical things which must be done to save the existing economy. Roosevelt is Arnold's leader. Although the theme and implications of his book involve enduring problems, its present impact must be considered in the light of the present clashes of interest in America. But this is a large subject and these pages are not the place for it.

**THE FOLKLORE OF MR. HOOK—A REPLY**

_Thurman Arnold*

The Editors have requested a comment on Sidney Hook's review of my book, *The Folklore of Capitalism*. I comply because perhaps a brief statement of my position will serve to clarify the differences between our respective points of view. At the outset, I wish to say that Mr. Hook's very generous praise of parts of the book is particularly gratifying since it comes from a scholar for whom I have the greatest admiration and respect.

If I were to describe the differences in our attitudes, I would say that Mr. Hook is an inspirational philosopher attempting to discover and analyze ethical formulas while I am an unphilosophical observer attempt-

*Professor of Law, Yale University School.*
ing to write of what I have actually seen and felt in my contact with governmental institutions. That latter type of writing is not essentially different from the creative work involved in writing a novel. A novelist in his best books usually writes of his own early life. His second best books take in the odds and ends which he left out of the first. His inferior books are historical novels in which life is seen through the eyes and theories of other people and other books, and here ends his creative career. The same is true about the kind of observations of social institutions which I am trying to make. My book began as a description of the reorganizations on which I had sat as trial examiner for the Protective Committee Study of the Securities and Exchange Commission. When it was finished, it was found that the detailed account of these reorganizations made the book too long and unwieldy. They were, therefore, omitted, except as illustrations of general statements. However, in so far as I was able to describe them, the book is an account of the actions and thoughts of people whom I have seen and observed.

For such an undertaking Mr. Hook’s recommendation that I consider politics as a branch of ethics and define the “good life” seems to me to be the wrong technique. To be vital and accurate this kind of description should be expressed in the best rhetoric of which the writer is capable rather than logical dialectic. I can illustrate this only by analogy: Professor Yerkes of Yale has made some interesting and valuable observations of monkeys. Suppose he were interrupted by Mr. Hook during his observations with the following which I paraphrase from Mr. Hook’s review: “Failing to realize that the habits of monkeys is a branch of ethics, you are forced into a left handed acknowledgment of the central place of ethical judgment in your own analysis. Unaware of the implications of your own analysis, you do not feel called upon to develop a theory of the good or even to qualify your own original position according to which ethical judgments, strictly speaking, are nonsense statements.”

I suspect that Professor Yerkes reaction to this would be to say, “Please go away, Mr. Hook. If I listen to you I won’t be able to put down in simple English what these monkeys are doing.”

Of course, Mr. Hook would not make this remark to one studying monkeys. However, I suspect him of thinking that more careful analysis of the concept of the good life in Germany would have prevented the excesses of Hitler, and more thought on revolutionary principles on the part of the Russian people would have saved Trotsky. Certainly he thinks that my own observations of the conduct of political bodies would have been more accurate if I had first analyzed the good life. This is a necessary position for a philosopher to take. However, I think its chief utility is to
give force and morale to good preaching, and that it is not an accurate tool for describing moving social phenomena.

I hasten to say that I would be the last to do away with the philosopher who first defines the good life, and then writes about how far human institutions have erred and strayed from the notions in his own head about how they ought to behave. There is comfort and amusement in such literature. There is also the inspirational statement of ideals in such a way as to give them moving force. I do not think, however, that this point of view gives an accurate description of the effects of ideals any more than ethical philosophies give rise to psychiatric techniques.

Take one example from Mr. Hook's review. He states that certain of my observations about Russia in particular and history in general are naive. Starting from Mr. Hook's notion that politics are a branch of ethics which the political observer must first define before he can describe or act, I can see how that conclusion follows. According to Mr. Hook's definition of the political "good life" recent Russian history involves a moral crime against Trotsky. This point of view led Mr. Hook to lend his name and prestige to a trial of Trotsky before a volunteer court in Mexico. I admire his courage, in this enterprise, but think this point of view obscures political observation and judgment. Such gallant and romantic ceremonies seem to be one of the predictable results of looking at politics as a branch of ethics. Such, it seems to me, are the adventures of one who first defines the "good life" for a nation, and then looks at its conduct through the lenses of that theory. It is, I think, this habit of the philosophical mind of first determining what they want to look for, before they actually look, which makes them inept in actual organization. It is on account of this that when the smoke clears away we always find politicians rather than intellectuals running the actual day to day government while the intellectuals are writing its songs and poetry.

Philosophies, legal, ethical, and economic appear very different from the outside looking in than from the inside looking out. The "inside" point of view assumes that if reasoning men get their heads together, they can make the concept of a good life a workable tool. From the outside it is obvious that reasoning men never agree. Their conflicts only create more literature. On the attacking side that literature is courageous and romantic like the communist manifesto of Karl Marx. On the defensive side it is dull and complicated like the writings of our conservative economic philosophers and lawyers. On the defensive even Marx becomes dull and complicated. Taken as a whole, the parade of philosophers resembles a ballet. The sound theorists, lawyers and philosophers are in the center of the stage repelling the attacks of the unsound ones. Mr. Hook is a
brilliant expositor of Marx and is today, at least, in the attacking party. His function is to provide the opposition without which there would be no ballet at all just as there would be no Harvard-Yale football game if the two teams reached an agreement beforehand on the score. Tomorrow Mr. Hook may be a conservative with others attacking him. At least, this often happens. Sound theories have no meaning in the absence of unsound theories. Both are essential parts of the whole spectacle.

This philosophical ballet at any given time will represent all the conflicting ideals uppermost in the minds of the articulate people of the times. Failure of the judicial institutions to function creates an outpouring of legal literature in which the realists and fundamentalists clash. Gaps left by industrial institutions create an outpouring of definitions of contradictory economic and political ideals. Accepted institutions like the Post Office create no philosophical literature. Therefore, if you are looking at philosophers from the outside rather than from the inside, you reach the conclusion that socialism has no meaning except as a dissent from an order of things to which the term capitalistic is applied. When that dissent is most articulate, it means that two types of organizations are struggling for supremacy.

If you are observing these phenomena the most effective platform is one which does not put moral values on the types of organizations. A naturalist who said that butterflies led a better life than tumble bugs or that lambs were superior to lions because lions were so cruel would be introducing an irrelevant and disturbing note into his study.

It is for this reason that I cannot follow Mr. Hook’s advice and define my ethical standards when writing about institutions from an objective point of view.

It is important, however, for me to point out that the point of view of the objective observer of social institutions is not one which serves every purpose. It has a narrow and a special utility. It is not adequate for the leader or for the preacher. One cannot get beautiful portraits out of pure dissection and beautiful portraits have their place in our life. The point of view of the dissector is one which is useful only to explain how institutions work.

An analogy is useful here. Certainly a dissecting room is not a pleasant place. Nor does one hang an anatomical chart of one’s grandfather in the place of a portrait because it is a more accurate portrayal of the internal workings of the old gentleman. Nor does the psychiatrist, when he falls in love, take the same point of view towards that highly ethical emotion as he does when examining a maladjusted patient. There is, however, no real contradiction here. All that is necessary to say is that when you desire an inspirational portrait of your wife, you call an artist, but when she
is ill you call a surgeon. These two individuals look at the lady from
different angles, but each of their very different techniques is essential to
orderly living.

It has been pointed out by many that the platform on which I stand in
dissecting human institutions does not furnish inspirational philosophy.
In a dissecting room there is no place for an altar. This does not mean
that I am quarreling with the intellectuals or philosophers or the be-
lievers in fundamental principles of the law and economics and ethics.
For they sit in the seats of the mighty. I did not put them there, but I
would not remove them if I could. I only ask the privilege of taking them
apart, partly from sheer curiosity and partly from the hope that by doing
so, some sort of political techniques may be evolved.

Of course, I realize that when I speak of developing political techniques
and diagnoses of social maladjustments, I imply a set of values which are
not defined. I think, however, that definition of such values only con-
fuses. These values are not derived from definitions; the persons moved
by such values do not have their ideas clarified by such definitions. The
actual result of dialectic definitions of social values is only to create a
group of words like fascism, communism, regimentation, bureaucracy,
etc., which impede practical methods of distributing goods.

I leave to the philosophers the task of providing an inspirational phi-
losophy which will give us confidence to distribute goods more effectively.
I do not think, however, they will arrive at that philosophy through logi-
cal processes. My own observation leads me to believe that philosophies
have no meaning apart from organizations, and that the philosophy of
tomorrow will grow in connection with the organizations of tomorrow.
I do not wish to enter into an argument as to whether the philosophy or
the organization comes first. That is like the old argument about the
chicken and the egg. I prefer to say that they grow up together and each
moulds the other.

And finally, it is my belief that the realistic or debunking attitude is not
a bridge between the dissecting room and the inspirational philosopher’s
chamber. It is only a ceremony in celebration of one of our current myths
called intellectual integrity. To illustrate the futility of de-
bunking I have used in one of my books the motto which runs across the
façade of the New York Post Office. It reads: “Neither snow nor rain nor
heat nor gloom of night stays these couriers from the swift completion of
their appointed rounds.” Debunked, this phrase is changed to “mail will
be delivered even in bad weather.” Yet one who so changed it would
understand neither the functions of architecture nor the emotional factors
which bind organizations together.