BOOK REVIEWS

LAW AS LOGIC AND EXPERIENCE. By Max Radin. New Haven: Yale University Press, 1940, pp. x. 171. $2.00.

A remarkably readable study of the nature of the law. Professor Radin's volume is a refreshing tonic in these days of kaleidoscopic variations of pattern in the fabric of jurisprudence. For the lawyer and judge, it fills the prescription, "Examine thyself." For the layman, it helps to give him an understanding of the otherwise confusing process which he knows as "going to court." Certainly, it does not explain to him why he cannot testify, on the stand, that a stranger told him that the automobile that knocked him down was a green sedan, but it does help him to realize that there is sound basis for that and many other rules.

Professor Radin takes his text from Holmes' *"The Common Law,"* that "The life of the law has not been logic: it has been experience," and proceeds, by intelligent and intriguing *logic,* to prove that Holmes was right. Since the discussion is strongly philosophical, however, many will disagree, and, as is usual, they will prove, just as surely, that Holmes was wrong, by the simple expedient of giving the words "logic" and "experience" different facets of meaning than Professor Radin does.

Thus, it can be admitted that human experience lies at the root of all legal concepts. But, it will be pointed out, experience is only half the story, for after the experience follows the logical process of examining the result of the experience, deciding whether it is desirable or not and hence "good" or "bad," and thereafter promulgative "law." Is not this process of induction from experience just as much logic as the deduction of physics and mathematics which most persons associate with the term "logic"?

Again, Professor Radin urges that the "experience" which is the life of the law is a marginal and exceptional experience, not the common and usual situation. On this point, too, there is much room for disagreement, also by employing a different meaning for the terms used. For example, in *Welch v. Helvering,* 290 U.S. 111, the late Mr. Justice Cardozo said:

> "Ordinary in this context does not mean that the payments must be habitual or normal in the sense that the same taxpayer will have to make them often. A law suit affecting the safety of business may happen once in a lifetime. The counsel fees may be so heavy that repetition is unlikely. None the less the expense is an ordinary one because we know from experience that payments for such a purpose, whether the amount is large or small, are the common and accepted means of defense against attack. . . The situation is unique in the life of the individual affected but not in the life of a group, the community, of which he is a part. At such times there are forms of conduct that help to stabilize our judgment and make it certain and objective. The instance is not erratic but is brought within a known type."

It is this experience, therefore, that is the fountain of our law—all human

experience—and the more that experience is taken into account, so will our law be more just, reasonable and lasting.

This experience, of course, is constantly changing, some aspects disappearing, others coming into being. The "law" adopted at the Town Meeting of Newark on October 30, 1666, that

> "any Man that would take Pains to kill Wolves, he or they for their Encouragement should have 15s for every grown Wolf that they kill, and this to be paid by the Town Treasury."

is not the "law" in Newark today because it is known from the experience of all those persons who have lived there and throughout the metropolitan area, that wolves no longer roam at large But it is "law" in that city today that electrical wiring must meet certain minimum specifications.

The first is still "law" in many localities where wolves are a public danger, the second is not where electric wiring is unknown. Thus it is the experience which is common and not unique that matters, for if a single wolf were to escape into the streets of Newark today, it is not likely that any general "law" would be adopted providing for bounties for the killing of wolves.

Professor Radin does not, however, take an unyielding position on these or any other questions. His work is a sane and reasonable investigation of his subject, and attempts to probe and dissect rather than to redesign and rebuild Perhaps the title of the book is significant, for the life of the law is neither logic nor experience; it is both.

VINCENT P BIUNNO.

NEWARK, N. J.

THIRD COPYRIGHT SYMPOSIUM, The American Society of Composers, Authors and Publishers, 1940, pp. xx, 393.

To those unfamiliar with the aims of the *Nathan Burkan Memorial Competition* permit me to elucidate. Its fundamental purpose is to foster a greater interest in the subject of Copyright Law among the students of law and members of the Bar and enlighten them as to the significance and importance of this field of law. Its method of encouragement is by the competition of students of participating law schools who are invited to submit their papers on some aspect of Copyright Law to the Dean of their law school who selects the best writing for which the author is presented with an acknowledgment of his meritorious attainment together with an award of $100 from the American Society of Composers, Authors, and Publishers who sponsors this competition. That paper is then forwarded to the American Society of Composers, Authors and Publishers who adjudges the five best essays which are then published in book form and widely circulated among the Bar and in law libraries at home and abroad A copy is obtainable upon