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### Book Reviews

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## BOOK REVIEWS

*For the Defence*, by Edward Majoribanks. The Macmillan Company, New York, 1929.

This is another of those delightfully entertaining, as well as instructive, Biographies of the great leaders of the English Bar.

Sir Edward Marshall Hall, according to his biographer, was what we in America would call a "jury lawyer." His proper forum was the jury and not a Court of Appeals. He is portrayed as exceedingly handsome and of a distinguished appearance; impassioned in his eloquence, fearless in the discharge of what he thought was his duty; at times making terribly great blunders, but also surprisingly great recoveries. He does not ask for verdicts at the hands of juries; he demands them, and we are told that sometimes, he went even further. He dared the jury to return a verdict adverse to him! The subject of the sketch has left his own ideal of an advocate. Said he: "My profession and that of an actor are somewhat akin, except that I have no scenes to help me, no words are written for me to say; there is no black cloth to increase the illusion; there is no curtain, but out of the vivid, living dream of somebody else's life, I have to create an atmosphere—for that is advocacy."

At times, he was terrible in cross-examination, but like so many successful cross-examiners, not infrequently he aroused the sympathy of the juries for the witnesses to his prejudice. Withal, we have a most human character. In both his personal life, as well as his professional life, he rode the crest of the waves and then wallowed in the trough of despair! Fortunately for him, the end came when he was riding the crest, for like a Fairy Prince, he overcame in the end. He had to contend with hostile judges and a hostile press, some of which hostilities were due to his great blunders, but he never flinched.

He was a contemporary of Sir Edward Clarke, Lord Chief Justice Alverstone, Lord Chief Justice Reading, the Lord Chancellor, the Earl of Birkenhead, and that terrible prosecutor, Sir Archibald Bodkin. He was not only a friend of these great leaders, but a feared and respected opponent. The list of celebrated and sensational cases in which he appeared is entirely too long to enumerate; some of them are not known on this side of the water. Perhaps the most sen-

sationally celebrated were the Crippen case, the Fahmey case and what in England is known as the Beach murder case.

Early in life, Sir Edward became interested in hunting and firearms and his intimate knowledge of the mechanism of firearms was not infrequently used for the benefit of his clients and in the Fahmey case, it probably resulted in the acquittal of an innocent woman.

This volume depicts the life of a successful British Advocate. While he was a member of Parliament for a short time, Sir Edward made no name for himself in politics. His reputation was built up and founded upon his advocacy. His biographer, who is an ardent admirer, frankly states that he was a failure in the Court of Appeals. Sir Edward will, therefore, have to suffer the fate of all successful advocates.

To the American lawyer, perhaps one of the most interesting features of this, as well as similar books, is in noting the difference between the way our English cousins do things as contrasted with ours. An American would be surprised to see Chief Justice Hughes sitting at *Nisi Prius* in Richmond or Raleigh, trying a man charged with murder. A North Carolinian would be astounded to see Chief Justice Stacy trying the criminal docket. Such a scene, however, is familiar to the English. The Lord Chief Justice of England sits at *Nisi Prius* and is a familiar figure at Old Bailey. To the Englishman, it is no novel sight to see the Attorney-General of the Kingdom, as well as the Solicitor-General in their robes of office, prosecuting men in the criminal courts before juries. Shortly ago, the Attorney-General of North Carolina was criticized somewhat for descending to the arena of a Superior Court.

The trial lawyer in England, the barrister, takes his brief from the solicitor and not from the client. He does no office practice, and the office lawyer, the solicitor, generally engages in no trial practice.

The preparation of cases, especially on the part of the government, is vastly different. "Scotland Yard" is neither a city, a county, nor yet a state institution. It is national in its scope and a detective from the "Yard" is as much at home in Liverpool or Manchester as in London and has the same authority.

Again, we read that the Lord Justice "charged against the prisoner," "summed up against the plaintiff," or perhaps that he "charged for the prisoner" or "summed up against the defendant." Exactly what would happen to the trial judge in North Carolina who did such things, is unnecessary to mention.

The American reader is somewhat astounded to learn that at the rendition of a verdict, the applause in the court room was so great that the Lord Chief Justice ordered the room cleared. On one occasion, an enthusiastic crowd, after a verdict of acquittal of a woman charged with poisoning her husband, unharnessed Sir Edward Clarke's horses from his carriage and drew his carriage through the streets of London.

Again, a reading of this and other biographies tends to dispel some usually accepted notions of the administration of law in England. We find that by no means are all who are indicted for murder convicted; many are acquitted. Perhaps the large percentage of convictions as compared with the American standards is rather due to better preparation on the part of the Crown, and hesitancy in indicting people until a strong case has been prepared.

The author has interestingly briefed the evidence in a large number of cases in which his subject has appeared, giving interesting sidelights upon the trials and, if partisanship contributes to this interest, why not?

A reading of this and other such books is well worth the time of the members of the legal profession, and it is to be regretted that more of our leaders of the Bar do not leave behind them some account of their work and career.

H. G. CONNOR, JR.

Wilson, N. C.

*Legislative Principles—The History and Theory of Lawmaking by Representative Government*, by Robert Luce. Houghton, Mifflin Company. Boston and New York. 1930. Pp. 667.

The science of legislation is the designated field which Congressman Robert Luce has proposed to treat completely. Two volumes have been published previously: *Legislative Procedure* and *Legislative Assemblies*. The present volume, *Legislative Principles*, is the third of the series. A fourth, *Legislative Problems*, is being prepared for publication.

"The History and Theory of Lawmaking by Representative Government" is the sub-title of *Legislative Principles*, and this sub-title accurately defines its scope. One with a pre-conceived idea of the dryness of such a subject is agreeably surprised when he begins reading. The author's style is lively and easy to understand. The se-

quence of the chapters has been so logically arranged that the interest of the reader is carried forward without a break. Well-selected quotations from authorities to emphasize a point and historical references in regard to a subject bring variety to the reading.

Beginning with a discussion of the origin of law, the author traces the growth of lawmaking down to the present time when we find modern peoples experimenting with such innovations as the Initiative and Referendum. Of the twenty-five chapters of the book the first part represents a historical study of lawmaking, showing how representative government has come about. Government in the American Commonwealth is, of course, stressed, the chapter on Constitutions being particularly good. Then come a number of chapters on the fundamental problems of legislation. The author appears at his best in this field. The chapters on Minorities and on the Suffrage are among the strongest in the book. The latter part of the book is devoted to the theory of representation and the ascertaining and reflecting of public opinion. The two concluding chapters on the Initiative and the Referendum indicate that the modern era is not omitted.

Throughout the book the main study is of American institutions, but the laws and customs of European countries are presented whenever they have a bearing on the subject. Sometimes this is by way of contrast as when we are told in Chapter IV that "England has always placed more stress on the raising of money" and "government as a business"; "America on the spending of money" and "government as a blessing." The author makes a rather strong statement on page 120 when he says that "In every essential particular the American lawmaking system has always been what it is today—the reverse of the English System." This comes somewhat as a shock to us who have been taught that our principles of government are derived from the "immemorial rights of Englishmen." It is interesting to note that the author takes issue with Woodrow Wilson on this question.

At other times the author shows from the examples of foreign nations mistakes to avoid in America. In the chapters on Minorities and Occupational Representation, his conclusions regarding proportional representation are very convincing. This plausible idea has made headway in Europe and has been and will, no doubt, further be tested in the United States. The result, however, is the forming

of a group of blocks in legislatures, which under our constitutional government means a stand-still in legislation.

One of the interesting features of the book is the presentation (without taking sides or urging changes) of fresh ideas in governmental practice. One of these is a suggestion that the right of suffrage may have been too widely extended and that the pendulum may swing back in the other direction. Educational tests and qualifications seem to be on the way. Another new idea is that our localities have weakened and that the old fundamental American practice of locality representation may be due for a modification. The author quotes H. G. Wells, "The world is passing rapidly from localized to generalized interests." Still another innovation would be that the State pay justifiable election expenditures of candidates on the theory that the electorate has a responsibility in becoming acquainted with those whom it is to put in office. Our mounting costs of elections are often a heavy drain on candidates and the present system is admittedly demoralizing and dangerous.

This review should not be concluded without an appreciative comment on the fairness and even-tempered manner with which Mr. Luce treats his subjects. Also the immense amount of labor and painstaking investigations necessary to compile this volume are evident to the reader and deserve high praise. Mr. Luce is due the thanks of all legislators and students of government for his interesting and instructive treatise on Legislative Principles.

M. K. BLOUNT.

Greenville, N. C.

*Psychology for the Lawyer*, by Dwight G. McCarty. Prentice-Hall, Inc., 70 Fifth Ave., New York, N. Y. Pp. xiii, 723. \$6.00.

"Commissioner Whalen and the New Police College." "Chair of Criminology established at Chicago." "Murder Confession Filmed on Talkie." "Surete Labatoire Convicts with Clothing Dust." "Berkeley Lab Tests Lie Detector." "Fingerprint Automobile Tires." Such recent headlines have, no doubt, aroused in many well-read lawyers a desire for a non-technical "horn-book" evaluating the advance of applied science in the field of legal procedure. Two thousand years ago Attorney Quintilian, of Rome, wrote an interesting volume concerning human nature and the lawyer's practice; in A.D. 1929 Lawyer McCarty, of Emmetsburg, Iowa, gave the world the

instant *magnum opus* on the same subject. A few years ago there appeared a volume, Brown on *Legal Psychology*; the psychologists swore mightily that Brown was a lawyer, while the lawyers shouted to high Olympus that he was a psychologist. Suffice it to say that McCarty has done better than Brown.

The book was written for the practitioner with the "hope that it will prove of practical value in a field little worked as yet but fertile and full of possibilities." A University psychologist would, doubtless, regard the book with mild contempt or amusement, although the excellent foot-notes and the more excellent bibliography show an easy familiarity with all of the scholars in this admitted "new ground" of psychology and law. The book opens to an analysis of the "Scientific New Day" and moves onward with a superficial discussion of the forces molding human behavior. Here we find an excellent chapter on "Motive," its analysis and proof. Chapters follow on "Habit," "Bias" and "Intention in the Law"; the last being the most succinct. So throughout the book, a splendid chapter is often hand in hand with inconsequentiality and mediocrity. The chapters on "Memory" and "Detecting the Liar" contain the gist of the best modern interpretations of the scientific findings in these fields. In many respects the portion dealing with "Psychology and Evidence" is the best in the book, since it sets forth clearly the psychological bases for many evidentiary rules. Responsibility and Legal Insanity come in for pertinent comment. The discussions of psychiatric examination of prisoners and the treatment of mental defectives point out promising, but revolutionary, scientific reforms. The last three chapters deal intimately with the problems of every-day practice—knowing the client, constructive counsel, and strategy in lawsuits; these might be called "Table Talks With A Young Lawyer."

Human nature, that eternal variant in every social formula or sociological equation, remains a mystery after 736 pages. Few, indeed, of the laws governing human impulse, thought and action have been revealed to man. The field is almost untouched; how vast a treasure of psychological data may be brought forth in the future, no man can say. The paucity of achievement in legal psychology is clearly revealed by this book, which seeks so ambitiously to review the entire realm. Without doubt, everyone who reads this book will watch with interest the activities in the field of forensic psychology. Its potential yield is greater than a Doc Cook oil-field or a guinea-pig

farm, but only time and the painstaking research of practical-minded scientists can give to the courts the much-needed methodology and scientific technique.

Mr. McCarty has done a creditable piece of work. He has prepared in readable, concise form, writing with an eye to the needs and desires of the busy practitioner, a revue of the scientific achievements, to date, which, in office and court-room, may be of practical value to us who know more of drab court-rooms than of laboratories, more of spittoons than of schizophrenia, more of Lockhart and Jerome than of Aschaffenburg and Schlesinger, more of gavels than of galvanometers. The complete, or entirely praiseworthy, legal psychology has not been written, but this volume is by odds the best practical, legal psychology to date.

DILLARD S. GARDNER.

Marion, N. C.

*Famous Speeches by Eminent American Statesmen*, collected and edited by Frederick C. Hicks. St. Paul: West Publishing Company, 1929. Pp. xii, 990.

Professor Hicks presents a selection of speeches delivered by men and women from almost every walk of life, dealing with topics touching virtually every phase of our national existence. There has been no play of favorites, either in speakers or topics discussed. The obvious effort is to present a collection of speeches by representative Americans, covering subjects that have been most before the public in the past seventy-five years, with greater emphasis on the past thirty years. And the author has succeeded admirably. The speakers range from women suffragists to the chief justice of the United States, from presidents of the United States to would-be presidents, from clever senatorial debaters to dignified educators, from journalists to leading lights of the American Bar. Included in the list is Booker T. Washington, outstanding representative of the negro race. Diversification is not limited to the speakers, but extends to the subjects as well. America's Disraeli, Judah P. Benjamin, espouses the right of secession; Chauncey M. Depew addresses the senate on the pure food laws; Harry W. Chase paints a new picture in an educational address eulogizing Washington. The collection is not to be allocated to any of the well-known pigeonholes used as receptacles for such works. It is singularly itself, destined for the prize circle of the well-thumbed.

To quibble on words, designation of the varied speakers as "statesmen" is hardly consonant with the every-day idea of the meaning of the word. Their activities are many, ranging from charity workers to diplomats, including legislators, lawyers, jurists, and journalists, financiers, scientists, theologians, suffragists and educators, as well as "just politicians." Certainly none of those included will take issue with Professor Hicks—all are eminent and American, as well as "statesmen" in their own fields. Those who suffer the chill of slight in having been excluded will take comfort in the fact that the volume does not purport to contain all of the "great."

In his preface to the volume the author enumerates the varied subjects with which the speeches deal. A rough classification shows that three cover the famous oleomargarine debates in the Senate, five relate to the World War, four are on the League of Nations, six are memorial addresses, five are addresses before the American Bar Association on varied topics, four touch the Civil War era, two are on woman suffrage, one on labor, one on the Irish question, five on international policies, with allocation of the others under the heading of "general."

Although the author does not limit himself to contemporaries, forty-two of the speeches included are products of the twentieth century, while the others range over the period of the last half of the nineteenth century, the greater portion occurring in the late eighties. It is obvious from the inclusions that Hicks does not seek to cover the entire period of American history—a hundred names are on the tongue-tip, that should have been included had such been the case. No collection covering the full era of our national life would be complete that omitted the leaders in the Revolutionary War period. Among those included, some of the better known are Abraham Lincoln, Judah P. Benjamin, William E. Borah, Claude G. Bowers, William J. Bryan, Nicholas Murray Butler, Calvin Coolidge, Oliver Wendell Holmes, Herbert Hoover, Charles Evans Hughes, Theodore Roosevelt, Alfred E. Smith, William H. Taft, and Woodrow Wilson.

Thumb-nail biographies of each of the speakers add greatly to the collection's interest. Knowing the career of the principal, and the conditions attendant upon deliverance of the speech, one gains clearer understanding and appreciation.

It is pleasant browsing through the impassioned pleas of Seward and Benjamin, uplifting to read again Lincoln's immortal Gettysburg

Address. Susan B. Anthony delights the reader with her clever tirade against the judge for his directed verdict of guilty in her trial for illegal voting, following a test vote in the fight for woman suffrage. James E. Reed inflames with his fiery attack upon prohibition, amuses with his biting witticisms, and is answered with the dogged logic of Borah. Blackburn's retort to Ingalls before the United States Senate illustrates an art which seems lost in the present day—clever rebuke of an opponent without indulgence in the mud-slinging antics practiced by some of the present senatorial contingent. Inflammatory appeals to party prejudice are Ingersoll's "The Plumed Knight," nominating James G. Blaine as Republican candidate for the presidency, William J. Bryan's "The Cross of Gold," closing the debate on adoption of a party platform, Bower's "Privilege and Pillage," keynote address at the recent Democratic convention, and Franklin D. Roosevelt's "The Happy Warrior," nominating Alfred E. Smith for the presidency. In contrast to these are formal addresses delivered by Holmes, Taft, Hoover and Wilson.

Four women contribute two speeches on enfranchisement of women, one on the part of women in war, with Mabel Walker Willebrandt making the most recent addition in her political bomb-shell "Prohibition Enters Politics."

Hicks presents this collection as proof of a new oratory designed to fit the scheme of modern life. He reassures the mourners of the "silver-tongued" by showing that oratorical genius has not passed away but has merely taken on a new form. The speeches of today are for the most part simple, direct statements of statistical data. They lack the appeal of the calm, steadfast, incisive pleas of the old-time northern orator, the tempestuous, fervid and enthusiastic outbursts of the southerners in reply. With the advent of commissions, of back-stage coalitions to secure legislative action, deliberative oratory in the United States has drooped toward its nadir. Legislative debate today concerns itself mostly with invention of new invectives to hurl into the brawl of petty jealousies, or meddlesome and unwarranted attacks upon every appointment or action of a public official. Distinguished oratory in other fields has fallen victim to the restlessness of the American people, the insatiable desire for speed, the appeal of the "talkie" and its ilk. Perhaps the radio and television may bring back another classic period of oratory.

WALTER HOYLE.

Chapel Hill, N. C.