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BOOK REVIEWS

A Study of Law Administration in Connecticut. By Charles E. Clark and Harry Shulman. New Haven: Yale University Press. 1937. Pp. xiii, 239. $3.00.

This study was undertaken twelve years ago, when the statistical method was first being applied, with somewhat extravagant expectations, to the problems of judicial administration. It was supposed that an exhaustive analysis of all the data appearing upon court records would give a clear and accurate picture of what the courts were doing and how they were doing it, and that this would supply sufficient information for thoroughly testing the efficiency of the courts and determining what changes in organization or procedure might bring about improvements in the judicial system.

But the information found in court records covers an exceedingly wide range, and while some of it relates very directly to judicial administration, a large part of it relates entirely to the social and economic conditions of modern life. This is quite clearly shown in the book under review.

Thus, we learn, on the one hand, how many cases, of 26 designated types, were adjudicated by the Superior Courts of New Haven and Waterbury in each of 14 years, together with the rate of increase in the case load for each type during each year of the period; how long the cases of each type remained pending; how many cases of certain types were terminated with, and how many without, consideration by the court; how many of each type were tried with juries; how many appeals were taken and the results thereof; how many summary judgments were rendered. These are matters relating to court operation.

On the other hand, we learn in the chapter on Divorce, how many decrees were sought on each of the available grounds; that the number of cases fluctuated irregularly from year to year without definite trend; that wives were complainants twice as frequently as husbands; that the fourth year of marriage was more likely than any other to bring a suit for divorce, but that the cause of divorce was most likely to have arisen in the first year; that in 53.4% of the cases there were no children shown by the record, in 24.2% of the cases there was one child, and in 13.1% of the cases there were two children, and that the children were about equally divided according to sex; that cruelty was predominantly a husband's fault and a wife's complaint, while adultery was predominantly a wife's fault and a husband's complaint; that husbands behave relatively better in the later years of marriage; that the

proportion of suits brought by wives diminished with the length of the interval after marriage; that the older the marriage the more common was desertion as a ground, while the reverse was true of cruelty; that the interval between cause of suit and bringing of suit varied with the grounds alleged; and that only 9% of the cases which resulted in decrees were contested. These items have practically nothing to do with court administration. They relate almost solely to the conditions which affect the institution of marriage.

Similar data has been assembled regarding the foreclosure of mortgages, part of it relating to the processes of litigation but much of it dealing entirely with the social, economic and financial aspects of mortgage transactions. The material relative to criminal cases is of the same character.

Since data of both of these types is presented with equal fullness and detail, the content of the book hardly justifies the title. The book is not a study of law adminisration. Neither is it a study of the social or economic relations which produce litigation. It draws no conclusions of any kind. What it does is to demonstrate the availability of the statistical method for assembling and preserving, in convenient form, the varied data found in court records. It suggests the possibility of amplifying those records by including additional items. At the same time it makes clear the necessity for developing better methods of keeping records, which will reduce to a minimum the labor of classifying the items and of presenting the results in the form of statistical tables which can be published and made widely accessible.

How such statistical material will be utilized the authors do not undertake to suggest. But it is clear that it will furnish only one line of approach to the solution of the problems with which it deals,—a line which must be supplemented by other methods of investigation. As to its value they make no claims. But they warn against over-confidence in the results of any purely statistical studies.

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The Constitution And What It Means Today. Fifth Revised Edition. By Edward S. Corwin. Princeton: Princeton University Press. 1937. Pp. xxiv, 193. $2.00.

Interpreting The Constitution. By William Draper Lewis. Charlottesville, Virginia: The Michie Company. 1937. Pp. vi, 117. $2.00.

Professor Corwin's book consists of a short gloss upon each successive clause in the Constitution. Written for laymen, the book simply

and without confusing detail expounds today's Constitution. To relate the written document to the going governmental institutions of today, Professor Corwin finds little need for textual exegesis. Rather, he draws upon history, upon court decisions and judicial doctrines, and upon governmental practice. Thus he emphasizes how small a part the words of the written Constitution play in the decision of constitutional questions and stresses the judges' freedom of choice and the essentially political character of their function.

Mr. Lewis's book, which comprises his 1937 lectures under the William H. White Foundation at the University of Virginia, is not so specifically directed to non-lawyers. It considers why an official interpreter of the Constitution is necessary, why the framers failed to provide for one, how the Supreme Court has come to be recognized as the official interpreter, what factors influence it, and the problems it faces today.

The judges' freedom to exercise essentially political choices is especially great, Mr. Lewis points out in his final chapter, with respect to the principal constitutional problems of today. A widely-held opinion calls for the abandonment of *laissez-faire* and holds that the states cannot effectively supply the needed regulation of economic affairs. The answers to the questions whether government, state or national, may regulate the prices of commodities and services and whether the national government may regulate production and may itself carry on business depend upon the meanings to be attributed to those vaguest of constitutional provisions, the due process clauses, the commerce clause, and the taxing-spending-general welfare clause.

The glosses on these clauses in Professor Corwin's little book are too short to make the book an adequate substitute, for lawyers and law students, for his other writings. But lawyers and law students will find this book valuable. Because the greater part—and the more important part—of our constitutional law involves but a few of the many clauses in the Constitution and derives but little from the wording of those clauses, lawyers and law students rarely turn to the document itself. They are too often uninformed about the construction placed by the courts or by governmental practice upon nine-tenths of the clauses in the document. Professor Corwin's book is well adapted to enabling them to inform themselves about these clauses.[1]

[1] A few of Professor Corwin's statements trouble the reviewer:
(a) At page 55 it is stated that the obligation of contracts clause no longer interferes seriously with state power to protect the public health, safety, or morals or to promote the general welfare "for the simple reason that the State has no power to bargain away this power." To the reviewer, this is not a "simple" reason, because it is difficult to find a satisfactory reason for the inability of the state to bargain away the power. Moreover, it affords a rationalization of the validity of state statutes interfering with prior contracts to which the state was a party,

Because the judges have such great freedom of choice and thus exercise an essentially political function when they decide constitutional issues, the questions Mr. Lewis discusses are fundamental to an understanding and for an appraisal of our governmental system.

The framers, Mr. Lewis believes, realized the necessity, in a federal government, for an authoritative official interpreter of the Constitution. They feared that if they designated one, a wrangle would ensue which might prevent the adoption of the Constitution. They were content to make no designation because they believed that the role would be assumed by congress or the Supreme Court; they cared little which did assume it, the important thing being that final interpretative power be not left to the states.

Marshall, in *Marbury v. Madison*,[2] claimed the rôle for the Supreme Court. This, Mr. Lewis thinks, Marshall's background made inevitable. The social and political philosophies of the judges necessarily influence their choice between different interpretations of the document and thus necessarily influence our constitutional law. Hence, the danger from the practice of appointing to the Supreme Court successful practitioners, who usually (Mr. Lewis believes) have acquired the conservative views of their wealthy clients. Yet *M'Culloch v. Maryland*[3] and *Gibbons v. Ogden*[4] show that decisions reflecting opinions of the more conservative classes, not held by the majority, may be for the best interests of the nation.

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but not, as stated on page 57, of the validity of state statutes interfering with contracts to which the state was not a party. *Cf.* the more satisfactory rationalizations used by Daniels, J., in The West River Bridge Co. v. Dix, 6 How. 507, 12 L. ed. 535 (U. S. 1848).

(b) At page 110 it is stated that "The amending, like all other powers organized in the Constitution, is in form a delegated, and hence a limited power. . . ." The meaning of this is not apparent.

(c) At page 112, after a clear statement of the relation between the supremacy clause of Article VI and the Tenth Amendment, it is said that the national government may not "press its otherwise constitutional measures to the extent of menacing the right of the *peoples* of the States to maintain effective governments for State purposes." The reviewer would like to see an elaboration of this concession by the arch-opponent of "dual federalism" as a test of national powers.

(d) The gloss on Amendment V (page 124 ff.) contains no suggestion that there is less historical warrant for construing the due process clause of that amendment to apply to substantive law as well as to procedure than there is with respect to the due process clause of Amendment XIV.

(e) At pages 138-139 Hans v. Louisiana, 134 U. S. 1, 10 Sup. Ct. 504, 33 L. ed. 842 (1890) is cited for the proposition that Amendment XI protects a state against suits for debts brought by its own citizens. Monaco v. Mississippi, 292 U. S., 313, 54 Sup. Ct. 745, 78 L. ed. 1282 (1934) now reexplains the *Hans* case and does not rest its doctrine on Amendment XI.

Lawyers will find irritating the fact that the notes are segregated at the end of the book instead of being printed at the bottom of each page. Moreover, the dates of cases are not given.

[2] 1 Cranch 137, 2 L. ed. 60 (U. S. 1803).

[3] 4 Wheat. 316, 4 L. ed. 579 (U. S. 1819).

[4] 9 Wheat. 1, 6 L. ed. 23 (U. S. 1824).

In tracing the history of the acceptance of the Supreme Court as the authoritative interpreter of the Constitution, Mr. Lewis distinguishes between acceptance by non-official parties to litigation, official parties to litigation, the president, congress, and the states. He shows that not until the Civil War was there an end to state refusals to accept. Justices of the Supreme Court, he points out, do not always prefer their predecessors' interpretations to their own. He believes that members of congress, and the president, should not feel bound to subordinate their interpretations to the Court's, though they should realize the futility of their refusing to accept the Court's interpretation in the absence of reasonable ground to believe that the Court will no longer adhere thereto.

After considering the principal constitutional problems of today and stressing the freedom of choice of the judges with respect to them, Mr. Lewis wisely observes that what may shock the general sense of justice this year, may not do so next year. Though Mr. Lewis does not point the moral, his whole book seems to the reviewer to counsel judicial tolerance and self-limitation.

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The Mind of the Juror. By Albert S. Osborn. New York: The Author. 1937. Pp. xv, 239. Library Edition, $4.00; Student Edition, $3.50.

This volume contains much accurate and interesting information as to all phases of jury trials and presents some excellent suggestions for the improvement of such trials; but to find this information and these suggestions the reader must plow through a large amount of unsound, impractical and unordered reading matter. On the whole this laborious plowing is probably worth the trouble.

There are two principal criticisms of the book. The first is that it assumes dogmatically that in every case tried before a jury one side is right and the other side is "against the facts". Those familiar with jury trials know that in many, and probably most, cases there is no absolute right side or wrong side, since the questions involved are questions of degree; for example, personal injury actions which present the questions of negligence, contributory negligence, and damages. The explanation of the author's rigid classification probably lies in the fact that his principal experience has been with cases involving the handwriting or execution of contested papers, in which cases there is usually an absolute right side and wrong side.

By his faulty premise the author is led to inject into most of his chapters certain suggested reforms (some of them most impractical) which are designed to hamper the lawyer who is seeking to prevail against the facts. Not only do these injections make the book more a treatise upon jury system reform than an analysis of the juror's mind, but also they destroy the continuity and logical presentation of most of the subjects referred to in the chapter headings. The result is that, just when the reader strikes an interesting discussion of the actual jury system, he has his mind rudely shaken by a repetition of the author's criticism of the jury system or by a new recital of the proposed reforms.

On the other hand the book has some excellent features. The chapter on "Tactful Tactics" clearly presents the successful trial lawyer's general conduct of a case. Of equal merit are the chapters entitled "Steps Toward Persuasion" and "Summing Up, Argument and Oratory". In fact, nearly all of the last thirteen chapters (out of a total of thirty-three) are interesting, sound, and instructive. There is a possible exception in the case of the chapter on "Cross-examination", which chapter is quite amateurish.

Among the several reforms of the jury system proposed by the author at least three are convincingly presented. The necessity for a better class of jurors is brought out in a forceful and interesting manner. The author suggests specific and practical means of improving this condition, to-wit, by a more careful selection of the jury panel, and by an abolition of the many jury exemptions and excuses.

The old controversy (within and without the bar) as to whether a trial judge should be permitted to express his opinion upon the facts is again brought forward; and the author makes out an excellent case for the federal and New Jersey systems which permit such expressions by the presiding judge.

Finally, most convincing reasons are offered for requiring the concurrence of only ten of the twelve jurors in the rendition of a verdict. It is pointed out that this change would not only eliminate many jury disagreements but would also deprive the obstinate juror of an opportunity to obtain an unfair verdict by his mere obstinacy or prejudice.

The last four chapters of the book present a subject only partially connected with the other chapters—the punishment of crime in America. After drawing a graphic and alarming picture of present crime conditions, particularly in our large cities, the author calls upon the bar and the public for a common-sense attitude toward crime and its effective punishment. He deplores the close association between certain criminal lawyers and their clients; and he suggest the elimination of the delays