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BOOK REVIEWS

Organization of Courts. By Roscoe Pound. Boston: Little Brown & Co. 1940. Pp. xiii, 322. \$5.00.

The Machinery of Justice in England. By R. M. Jackson. Cambridge: at The University Press. New York: The Macmillan Co. 1940. Pp. vi, 342. \$3.75.

These two books, dealing with the same general field of the law and published almost simultaneously in the United States and in England, strikingly illustrate the wide-spread current interest in the ways and means of administering justice.

Public concern regarding the courts is due to a general feeling that they have not only failed to show any capacity to so adjust their organization and methods as to enable them to serve as suitable agencies for administering the new social controls, but that they have not even maintained a satisfactory level of efficiency in the field of conventional litigation. These are disquieting reflections.

The two books under review deal with the problems of judicial administration from very different points of view.

Dean Pound's book is a mine of historical information regarding the changing forms of court organization in America from the beginning of the Colonial era down to the present time. Obviously the earlier stages of that development are found only in the older sections of the country. Almost every conceivable form of judicial organization, within the general framework of the familiar English system, was the subject of colonial experimentation during the seventeenth and eighteenth centuries. By the time of the American Revolution certain preferred types of organization began to emerge, and these formed the basis for the Judiciary Act of 1789. This Act marked the beginning of a new era in the organization of American courts.

From 1789 until the Civil War the states were all engaged upon the identical problem of devising a system of courts whereby justice could be administered locally in widely scattered communities while at the same time a unified jurisprudence could be developed by a centralized authority. This effort produced a rather general pattern which became current in the nineteenth century, consisting of a supreme court at the top, a system of local courts of general jurisdiction below it, sometimes with and sometimes without a separate court of probate, and local civil and criminal courts at the bottom having a petty jurisdiction. Following the Civil War the same process continued at an accelerated rate as the West became more fully settled.

Dean Pound has presented, with exceedingly full documentation, the details of this development, including the measures adopted from time to time by Congress to adjust the organization of the federal courts to changing conditions. He discusses the use of the divisional organization in courts of review, intermediate appellate courts of different types, the use of commissioners, the selection of judges, the rule-making power, municipal courts, terms of court, specialized jurisdiction, courts for small causes, and judicial districts and circuits, each so fully annotated with references to statutes that one can easily trace the progress of almost every feature of court organization. The book will be an indispensable source of data upon this subject beyond which it will seldom be necessary to go.

Upon the basis of this comprehensive historical review, Dean Pound has undertaken to point out what he deems to be the weaknesses in our system—the waste of judicial time over purely technical matters, overlapping jurisdiction, want of co-operation among public officers, lack of superintending control, inadequate provision for dealing with small causes, and the inconvenience of fixed terms.

He concludes with a presentation of his views regarding the proper principles and plan of a modern court organization. This is an admirable statement of his argument for a single, unified court for the entire state, an argument which he has been pressing before the American public for more than 30 years.

Mr. Jackson's book on *The Machinery of Justice in England* is not a historical treatise, but a study of the actual working of the English judicial system. He does, indeed, present a great deal of historical data, but it serves the wholly incidental purpose of throwing light on the present day problems of judicial administration.

As a readable and scholarly account of the organization, personnel, and operation of the English judicial system this book is unsurpassed. The entire court system as an operating mechanism passes before the reader like a panorama. While the amount of information which the book contains is amazing, the details never obscure the main outlines.

He shows how the County Court, as the poor man's tribunal, transacts a vast amount of business, with general satisfaction. And he shows how the High Court, on the other hand, operates so expensively, in respect both to its charge upon public funds and its cost to litigants, that it is hard to justify it as a governmental institution. Mr. Jackson sees no rational basis for the jurisdictional distinctions between the two courts, and suggests that the High Court might well be abolished and its jurisdiction taken over by the convenient, inexpensive and non-technical County Court. The House of Lords, as a court of second appeal, appears to him to serve no useful purpose.

The mode of trial in the High Court is elaborate, but he points out that relatively few cases are carried that far under the inquisitorial processes of the current civil procedure. The enthusiasm for trial by jury as a safeguard of constitutional liberty, so loudly proclaimed a hundred and fifty years ago, has died out, and the role of the jury in that field has now become insignificant. In ordinary cases juries are drawn almost exclusively from the middle and upper classes, and could only be made to include a fair proportion of working class people if jurors were not only adequately paid but also could in some miraculous fashion be protected from dismissal from their jobs on account of absence for jury duty. The explanation for most of the dissatisfaction with the jury is found, however, not so much in its constituent character as in the irrational regulations under which it is expected to perform its functions.

The basic principle of criminal prosecutions in England, that they may be instituted by any member of the public, is shown to have resulted in the police taking over most of the work. This has been fairly satisfactory. But the quality of the justice dispensed by the criminal courts suffers from want of proper legal assistance for defendants, from too many ill equipped and superannuated lay magistrates, from lack of competent full-time clerks, and from a tendency for magistrates to blindly support the police. The remedy suggested is for universities and adult educational bodies greatly to extend the opportunities for study of the legal system, so that criminal tribunals may be staffed with both professional magistrates and intelligent laymen sitting together.

There are interesting and realistic discussions of English theory and experience regarding many other problems involved in the administration of justice, such as the use of specialized courts, the hostile attitude of the legal profession toward administrative agencies, the personnel of the law, the breakdown of the class distinctions between solicitors and barristers, the risks and rewards of the two branches of the professions, the place of the universities, the Law society and the Inns of Court in supplying a legal education which is none too satisfactory, judicial salaries, the huge amount of costs taxable to litigants, and various methods of giving legal aid to the poor.

In conclusion the author presents the case for a ministry of justice, which, by stimulating research regarding the actual working of the law, should eventually produce a plan for judicial administration much more responsive to the needs of society.

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The Legal Status of the Negro. By Charles S. Mangum, Jr. Chapel Hill: The University of North Carolina Press. 1940. Pp. 436. \$5.00.

The evolution of the status of the Negro in American life since the Civil War has been the resultant of social forces. Continuing effort to achieve for the Negro a position of equality with his fellows and dignity in the community consistent with our national ideal of universal citizenship in a democracy has been opposed by unremitting pressure of large segments of society for the perpetuation of racial inequalities. Attitudes which originated in the ante-bellum way of life crystalized into inflexible prejudices and mental stereotypes which still survive as part of the cultural heritage. The play of these forces is reflected in the Reconstruction Amendments to the Constitution, in a large body of national and state legislation and in thousands of judicial pronouncements, materials which are the subject matter of this book. Moreover, this area has been a significant testing ground of the capacity of adjudication and legislation to serve as effective instrumentalities of social change despite substantial resistance in the community.

Decisions at critical points in the legal struggle over the status of the Negro have tended either to fix or to redirect the organization of American life. The *Civil Rights Cases*¹ were decided in 1883, while new patterns of life were still forming in the South. Had the dissenting opinion of Mr. Justice Harlan prevailed in that case it is reasonable to believe that a more democratic scheme of race relations would have prevailed throughout the nation today. Later in *Plessy v. Ferguson*,² the Supreme Court had occasion to make an only somewhat less far-reaching adjudication. Its determination there that laws providing for "separate but equal" public facilities and accommodations for persons of different races are consistent with equal protection of the laws licensed the device of state enforced segregation throughout the South. Beyond that, the willingness of the court to accept the possibility of equal accommodations as validating statutory segregation has actually resulted in gross and widespread inequalities. In retrospect and in the light of the judicial approach to an analogous problem in *Yick Wo v. Hopkins*,³ it is now clear that the consistent practice of gross discrimination under state segregation laws could as reasonably and more realistically have been recognized as indicating the discriminatory purpose and effect of such legislation and thus invalidating it. The present-day problem of racial discrimination in public education is not the least

¹ 109 U. S. 3, 3 Sup. Ct. 18, 27 L. ed. 835 (1883).

² 163 U. S. 537, 16 Sup. Ct. 1138, 41 L. ed. 256 (1895).

³ 118 U. S. 356, 6 Sup. Ct. 1064, 30 L. ed. 220 (1885).

of the consequences of the course chosen by the Supreme Court two generations ago.

In other phases of the evolution of the status of the Negro critical points are even now at hand. Although *Corrigan v. Buckley*⁴ is often regarded as giving decisive judicial sanction to residential segregation imposed through covenants running with the land and restrictive of acquisition or occupation of the restricted area by Negroes, the important question of the effect of the Fourteenth Amendment upon judicial action which, in enforcing such a covenant, ousts a Negro occupant from property because of his race, has never been thoroughly considered or decisively adjudicated. Such consideration and adjudication may be imminent.⁵ In a different field, present continuing legal attacks upon racial inequalities in expenditures and facilities for public education promise in time to make the dual system of education so expensive for already over-burdened communities that the gradual breakdown of the dual system can be anticipated, beginning at the university level.

The reader will not find such an approach in the present volume. The author has failed to make the most of his opportunity to reveal the dynamics of the struggle for status or to present the work of courts and legislatures as social forces in themselves and as resultants of other social forces. Concentration upon the mechanical task of assembling and organizing cases and statutes has resulted in a work which tends merely to be orientated in space, and thus to ignore the social consequences and relative significance of particular events in legal history.

Although such conceptual limitations detract from the book as a contribution to the literature of the law, they do not prevent it from being greatly serviceable to lawyers. It is the first comprehensive compilation of legal materials in its field. There seems to be no noteworthy omission of material, although the absence of tables of cases and statutes adds to the reviewer's task of checking as it must to a degree interfere with convenient use generally. It is unfortunate that several statutes which penalize racial discrimination by labor unions⁶ are too recent for inclusion in the chapter on "Labor and Related Problems."

Thorough as the author's research has been, value would have been added to the book by more detailed and critical analysis of the few controversial legal questions which the subject matter presents. For example, in the field covered by the chapter on "Marriage and Other

⁴ 271 U. S. 323, 46 Sup. Ct. 521, 70 L. ed. 969 (1925).

⁵ The issue is raised in *Hansberry v. Lee*, Supreme Court of the United States, No. 29, Oct. Term 1940, but its adjudication is not essential to the disposition of the case.

⁶ N. Y. CIVIL RIGHTS LAW, §§41, 43 (1940); PA. STAT. ANN. (Purdon, Supp. 1939) tit. 43, §211.6(1) (c); WIS. LAWS 1939, c. 57.