
Clive Anderson

"The first thing to do, let's kill all the lawyers," cried Dick the Butcher as he aroused the Blackheath mob to revolution.

As far back as Shakespeare's time the English lawyer was the object of primitive, but not uncommon, criticism. A more sophisticated critique of the profession was recently made by an English judge:

To the ignorant, it appears to be parasitical; to the social reformer, hide bound by tradition; to the politician, devoted to 18th century concepts of liberty and freedom of contract which are out of place in the world today; and to the Press, arrogant, stuffy, over privileged and standoffish.²

However embittered these slurs on the English legal institution appear, they were for the most part impotent until the 1960's. It was not until then that nonprofessionals, who had long resented the "sacro-sanct" esteem of the professions in general, effectively acted in concert to criticize the bar. As long as the Trade Union could withstand the onslaught of daily public scrutiny, the "other side" should be exposed to a little investigation also.³

Michael Zander, riding the crest of this criticism, undertakes the task of scrutinizing the English legal system and offering proposals to improve its standing both with the public and for the public interest. He brings to this endeavor fine credentials. He is an English lawyer of wide experience, having served both as barrister and solicitor. Furthermore, he has more than a passing acquaintance with the American legal system, and he uses the latter perspective to sharpen his objective and analytical study. The combination of these talents serves to pro-


¹ W. SHAKESPEARE, HENRY VI, part II, act 4, scene ii.

² The Role and Responsibility of the Advocate, Lecture by Mr. Justice Lawton at the University of Bristol (England), Nov. 4, 1966.

³ In January, 1967 the Monopolies Commission was asked to report on the restrictive practices employed by the professions, under the powers granted by the Monopolies and Mergers Act of 1965, c. 50, § 5. The report is still under preparation. See 740 HANSARD (H of C) Jan. 30, 1967, cols. 44-8.
duce a thoroughly researched and documented account of the practice of law in England.

Before reviewing this work, it is important to point out three general problems confronting the prospective reader. First, there is the obvious difficulty of foreign terminology that the American reader will encounter, unfamiliar as he is with English legal procedures and jargon. For instance, the American lawyer must learn that a "brief" does not mean a document containing an advocate's argument to be submitted to the court, but the instructions sent by a solicitor to the barrister who will handle the case in court. However, obstacles of this nature are worth overcoming, because the book has its message even for the American practitioner. One of the unexpected by-products of the work is that it shatters many myths concerning English law which are prevalent in the American mind. American lawyers, while recognizing the inefficiency and stagnation in the English system, still seem to credit it with providing the finest legal services in the world. Zander's book goes a long way towards shattering that misconception.

The second problem stems from the fact that the book was written in a transition period for the English legal system. Many of Zander's proposed reforms have already been addressed by the English bar, and parts of the book are outdated. However, the legal profession has not as yet been turned upside down. Most, if not all, of the changes have been of detail, rather than substance. Outside of reforms in legal education, there is no indication of sweeping alterations. Thus, much of Zander's commentary will be relevant for some time to come.

The final difficulty concerns the author's organization. Having articulated grievances in particular areas, he often offers more than one solution. Usually, he pleads these proposals in the alternative, working from the most radical to the more moderate. Where his discussion of reform is confined to one chapter, there is no difficulty in following his train of thought. An example of this clarity is found in chapter seven, where there is a well-defined discussion of whether barristers ought to be divided into Queen's counsel and juniors. However, in other parts of the book the reader is not offered such terse analysis and may remain unaware of an underlying theme the author has attempted to weave over a series of chapters. One of the worst examples of this faulty organization can be found in Zander's discussion of the difficulties in transferring from one branch of the profession to the other. The definition of the problem and the proposed solution are separated by no less than nine chapters. Apparently Zander hoped to save the suggestions for this crucial problem for his conclusion. However, had he avoided dramatic effect for the virtues

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4 The legal profession in England is often looked at starry-eyed by lawyers from this country and it is time that Americans examined the English situation more closely.
of organization, the reader certainly would have gained.

The author appropriately enough begins his analysis by examining the requisites for entrance into the profession. The focus of his discussion is on what restrictions should exist. Unfortunately, he skirts over the complementary and equally vital question of the actual effectiveness of the English lawyer's training. Although he might have wished to refrain from a complex analysis of this subject to avoid raising a myriad of peripheral problems, some greater detail could have been incorporated without totally losing perspective. For example, the author asserts that all lawyers should have a law degree from a university before they begin to practice. This is well and fine; however, the author has some responsibility to demonstrate why the degree is so necessary. This is especially important in light of the impression one gets from the book that legal education is only deficient when administered by such professional bodies as the Inns of Court or the "crammers." While it can hardly be denied that the rote memorization required of students to pass the Bar or solicitors finals is not the finest legal education, the alternatives are not considered to be much better. Some critics recently stated that "serious deficiencies exist in every kind of institution that provides formal instruction for law students, including the universities." This viewpoint has even been shared by the universities themselves, since they have espoused the philosophy that the study of law at that level is not the start of a professional man's training, but the end of a young man's education. Certainly this aspect of the English legal system could use further analysis.

Aside from the above, many other pressing questions are left unanswered. What would be the best method for integrating the two required sets of examinations? Should the university courses be linked to the requirements of the Bar or solicitors examinations, or should the students who pass the former be exempted from the latter? How much practical training should be required? How should the practical training be linked to the academic training? Should there be a common education for both barristers and solicitors? How soon after completion of the educational process should the choice between the two branches be made? These are questions that are vital to the practice of law in England today. Yet, Mr. Zander totally avoids these issues.

For what it may be worth, this reviewer would like to see a system in which the majority of lawyers first acquire a law degree

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5 Id. 569.
6 See generally B. Abel-Smith & R. Stevens, Lawyers and the Courts 565-75 (1967). This passage discusses the controversy within university law faculties whether the study of law is intended to provide liberal education or professional training.
7 The preceding discussion naturally proceeds upon the assumption that fusion of the profession is not possible, which is a reasonable assumption in the present climate of legal opinion.
(although this would not be mandatory) from universities that have made a serious effort to strengthen their curriculum. Thereafter, the prospective practitioner should spend a short period of time in practical training before opting for one branch or the other. Professional examinations should only be given to those who have not attended an accredited university. Furthermore, for those who are certain that they wish to be solicitors, practical training should be much less extensive. Inexperience is not a pressing problem for a new solicitor, since the firm he joins can carry him through his initial steps in law practice. In any event practical training should be held to an absolute minimum for both solicitors and barristers in order to avoid the harsh effects of the unsalaried period. This training should serve as a substitute for the present pupillage or articles requirements. These apprenticeships, which keep solicitors employed in articles at a pittance, and prevent barristers from earning anything, discourage many young men from entering the profession. The recruitment of bright young people would be increased if this period of poverty could be avoided. If the American experience is typical, there is little danger in letting newly fledged lawyers loose soon after qualification; the responsibility given to them seems to have been a beneficial boost to their later development as practitioners.

Both the Law Society and the new Senate of the Four Inns of Court have recently developed their own solutions, and the latter has been adopted. Of the two, the Law Society’s proposals, though primarily concerned with solicitors, come closest to the proposals outlined above. They advocate that the students qualify as “lawyers,” not as barristers or solicitors, whereas the Bar proposals envisage common preliminary examinations, but separate final tests to preserve the division of the profession. The Bar places special emphasis on the fact that students will receive practical training as part of their Bar finals; however, it fails to explain the philosophical inconsistency of retention of the pupillage requirement.

The new Bar proposals also envision a year’s course at the Council of Legal Education. However, adding the eighteen months that this course requires (counting two three-month summer periods), to a six months of pupillage, results in two years of starvation. The Bar hopes to mitigate the hunger pains by encouraging the government

8 “Pupillage” and “articles” are required periods of apprenticeship for barristers and solicitors, respectively. Taking place after the student has taken his final examinations, pupillage lasts 1 year, and articles takes 2 years for the law graduate and longer for the nongraduate. A solicitor in articles is paid a salary by the firm to whom he is “articled”; a barrister may not earn anything at all for the first 6 months of pupillage, and thereafter his income is whatever he can earn (usually not a lot). Both types of apprenticeship have been heavily criticized, since they are not very effective for providing the newly qualified lawyer with practical education. The Law Society appears to be ready to abolish articles.

to make grants to students during this period. Grants, however, are hardly a substitute for a decent wage.\footnote{However, a letter in the Times said that since the local authorities were unwilling in the past to make grants available to students in order to take Bar Exams, they were unlikely to do so now merely because the examination was "reformed." Accordingly, the writer suggested that a levy be made on the profession itself, under the provisions of the Industrial Training Act of 1964, c. 16, §§ 4, 12, to be used to pay for the training of Bar students until they were able to start earning. The suggestion has considerable merit, as it may well be that the responsibility for insuring that the profession continues to receive well-trained entrants rests upon the profession itself, although it is seeking to pass the responsibility to the state. The Times (London), Apr. 2, 1969, at 10, col. 5.}

One final reason for finding fault with the Bar proposal is the retention of final examinations. Nowhere in their report do they bother to articulate the reason for retaining them. It is difficult to imagine that they will take any other form than the present "cram examinations," which are valueless. At the same time, it would be a futile exercise to alter them so that they contain an emphasis on legal analysis and critical evaluation of legal rules, since the examinee, in most instances, has already passed this kind of examination in the university.

After his discussion of admission to practice, Zander allots the bulk of the book to an analysis of the regulations governing the activities of practicing barristers and solicitors. A constantly recurring theme is that practitioners, especially barristers, are unnecessarily burdened with minor regulations. He views this situation as a conflict between the "public interest" in having a legal profession as free as possible from petty restrictions, and the Bar's insistence that only through these controls will the high standard of conduct and ethics presently attributed to barristers be maintained. The reader quickly is brought to the conclusion that elimination of several of these regulations will not result in total moral decay among practitioners. As Zander points out, the Bar can justly be proud of its high standards of conduct, but those standards are not solely the product of regulations. Indeed, if this were so, it would not be very flattering for the Bar. Moreover, other professions enjoy comparable reputations for ethical conduct, yet they have not seen the need for such stern regulatory control on the activities of their members.

One often feels that the rules under consideration work well in the majority of cases, and that Zander seeks repeal more for the sake of symmetry than need. He admits that if the rules were abolished the actual practice would not be altered significantly. Of course, the mere fact that rules work well in most cases does not mean that the remainder should be forgotten; however, it does mean that there is a heavier burden on one claiming that change is necessary. Many of the rules regulating barristers are historical relics and are almost certainly recognized as such. However, as long as no substantial harm results to the public from their continued employment, tradition will keep them operative. Outsiders may regard this as untidy, but as Zander points out in a
different context, it may be too much to expect the Bar unilaterally to make a change which offers only marginal relief to the public, while causing upheaval in the Bar itself.

Zander’s argument is least convincing when discussing the vexing question of remuneration. Whereas certain criticisms (such as his objection to fixing barristers’ fees by advance guess-work\textsuperscript{12}) are certainly valid, his overall exhortation to the legal profession to be more competitive and willing to adopt some of the normal incidents of business (price-cutting in particular) is unconvincing. Without any doubt he is correct in stating preliminarily that the professional man is adept at deluding himself concerning the nature of his trade. Because he claims to be providing a service, rather than selling a product, his attitude toward his craft differs from that of a merchant. Although lawyers profess to subordinate money-making to the more noble goal of insuring the welfare of their clients and refuse to sully their professional lives with base commercial activities such as self-promotion or competition, Mr. Zander rejects these protestations as cant. The professional sells a product, and must perforce compete, just like the scorned business man.

In his campaign to enlighten the Bar toward the true nature of its profession and to breathe competition into the life of the law, the author misses one crucial fact: under the present circumstances, there is just no pressure to compete. Throughout the country, especially at the Bar, there is a sufficient shortage of lawyers for the majority to be able to make a comfortable income, without fighting amongst themselves for the spoils. Moreover, the individual lawyer cannot corner a larger share of the market by offering lower rates, because he has a limited capacity for work. Given the shortage, he is probably working very close to capacity at present. If this smacks of a monopoly of a small group of lawyers holding the public up to ransom in the form of disproportionately high fees, that is not the case. There is no evidence that the fees now being charged by the profession are excessive, and, in fact, many barristers think they charge too little. Even if the demand did not far exceed the supply, the author does not detail his proposals to change lawyers’ attitudes toward “non-professional” activities. Nor does he consider what other effects such a change of attitude could be expected to have. His plea for competition, as well as his readiness to cut prices, needs further study.

In sharp contrast to the shallow treatment of competition, the author offers a detailed and thoughtful analysis of the division of the profession in England. Mr. Zander nicely illustrates the surprising number of times the two branches of the profession are at odds with

\textsuperscript{12} This rule has other, even less defensible, by-products, not the least of which is that a barrister is entitled to the sum named on the brief, whatever happens to the case thereafter, whether or not he does the work. Thus, if the case is settled the following day after the receipt of the brief, the barrister still gets the full fee. See M. Zander, Lawyers and the Public Interest, 95-114, (1968).
one another. For example, barristers and solicitors are actually starting to war against each other over the Bar's monopoly of the rights of audience in higher courts. More militant solicitors have formed the British Legal Association (which describes itself as "the profession's only union") in order to challenge the Bar's claim to an exclusive right of audience. The attacks have consisted of a solicitor's appearance in court, demanding an audience from the sitting judge. Although these efforts may be a bit premature, since the entire question is now being studied by the British Government, they indicate, nevertheless, increasing resentment toward a distinctly monopolistic rule favouring the Bar. The Association, which now claims membership of about ten per cent of all solicitors, seems likely to continue to try to embarrass the Bar into action. How far the Bar is prepared to go is not clear, but there is no reason for the right of audience to be so restricted.

It is impossible in the limited space available for this Review either to do justice to the very thorough presentation, or to credit the considerable number of perceptive criticisms made by the author. However, mention should be made of the lengthy consideration given to the possibilities of reconstruction. Ink has been spilled for over a century in arguments over whether the profession ought to remain divided. Having first enumerated every argument that has been advanced for division, Zander skillfully refutes each in turn. Although he attempts to be objective, his bias in favor of fusion causes him to reject too quickly one major argument for maintaining division: that is, it encourages the development of a breed of specialists, notably in trial advocacy. He also tends to give too much prominence to the argument that fusion would reduce legal costs. It may be unduly cynical, but it is unlikely that substantial saving would result from the overall reorganization of the manner in which English lawyers handle a case. Fusion, Zander claims, would eliminate the duplication of work that arises from the practice of the solicitor first preparing a case, and then handing it over to a barrister who repeats the preparation for trial. Yet the American law firms that maintain a separate litigation section operate in the same manner. When the litigation department receives a case from another section of the firm, the trial lawyer must be briefed on every aspect of the case in much the same way a solicitor briefs a barrister. Presumably, the American firms continue the practice because it gets good results.

It is this reviewer's opinion, nonetheless, that fusion would be beneficial. Although the legal profession has responded to pressure to introduce lesser measures that would alleviate the effects of division

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23 The most recent was on March 31st, 1969, at Bristol Quarter Sessions, where the Recorder, Sir Joseph Molony, Q.C., refused Mr. George Bates's application for audience. Mr. Bates is a member of the British Legal Association; he promised that more attempts would be forthcoming. His was already the fifth in the recent campaign. The Times (London), Apr. 1, 1969, at 2, cols. 4-5.
(such as the reform of the educational requirements mentioned earlier),
the prospect for complete reform seems remote at best.

Unfortunately, Zander approaches reform as an all or nothing concept. He does not make an attempt to support the more limited, yet very deserving, changes, such as allowing barristers to form partnerships. 14 At the moment the barrister is a completely free agent, possessing only loose ties with other members of his chambers. For many, this independence is the primary attraction of the Bar. However, independence also has its disadvantages. It exposes the barrister to all the risks of the vicissitudes of professional life and unpredictable personal health. The only security he has to rely on are personal resources. This reviewer believes that it is more reasonable to give the barrister the option of deciding whether he prefers the independence of working alone or the security of a partnership.

The special committee of the Bar Council concluded that there was no substantial demand for partnerships 15 (which is probably an accurate observation). They have also come to the conclusion that there is no evidence that partnerships would serve the public interest. 16 This latter conclusion is founded on the theory that it is improper for a member of a partnership to appear before a judge who is, or was, a member of the same partnership. This liability hardly seems to be overwhelming in light of the American experience. The committee's final concern was that they felt that partnerships could in no way improve the quality of the Bar. 17 This is certainly a selfish attitude. Difficult as it may be to argue that it would improve the quality of the Bar, the prospect of providing financial security to the Bar's younger members would certainly seem to be a desirable goal. This security might also serve to lure those talented young people who are otherwise driven from the legal profession by the early "lean years." 18

Mr. Zander has written a book which, in his own words, is harshly critical of the English profession. He insists that his criticism has a positive side, and hopes that if some of the criticisms effect

14 The English legal profession remains opposed to any proposal to allow partnerships. The Times (London), May 16, 1969, at 2, col. 3.
15 Id.
16 Id.
17 Id.
18 The threat of economic ruin during the period of training causes many young lawyers to reject the profession upon completion of their course of University study. Out of 13 lawyers in the 1967 class at Worcester College, Oxford, there were 5 who intended to become, and did become, solicitors. The remaining 8 became Bar students, but not one has yet entered chambers. To my knowledge, only 2 have taken the Bar finals. More significant, 4 have taken full-time salaried employment outside the law, and have no intention to practice. In 3 of the 4 cases, this was a conscious decision to exchange the uncertainty of the young barrister's start in his career for the security of salaried employment.

These figures are in no way regarded as significant, or representative of nationwide trends, but are set out merely to show that intending barristers are still being scared off by the old bogey of the first few years of penury.
changes, the profession will be the better for it. Not all of his proposals are equally meritorious, but many are excellent. When a group is assailed with such profuse criticism and overwhelmed with diverse suggestions, there is a tendency to resist any change. Fortunately, the legal profession may have raised its arms to block the sun, but it has not closed its eyes. Though the pace of change may not be as fast as it could be, reform is in the air. Let us hope that some of Mr. Zander’s suggestions become realities, in this fertile atmosphere.
To be black in America is to suffer discrimination at the hands of white Americans; to be black in America is to be deprived of opportunity, to be denied equal protection of the law, and to be devoid of hope. Believing that the preceding is an accurate description of the condition of the black man in the United States, Floyd McKissick has written *3/5 of a Man* to expose to white America the rampant racism existing within it, and to warn of impending disaster unless the black community is liberated and social equality becomes a practical reality rather than a theoretical ideal.

McKissick traces racial discrimination in this country from the first appearance of the black man on this continent. As early as 1569 the English legal system rejected the idea that men could be enslaved, resolving "[t]hat England was too pure an Air for Slaves to breath in." However, it was only forty years later that the roots of slavery were planted in America when the first Negroes were brought to Jamestown as slaves. When they first reached the colonies, their status depended more on their religion than on their color (which perhaps explains the author's rejection of religion as a viable check on discrimination). When religious distinctions were obliterated in 1730, race became the paramount factor determining status.

A history of the treatment of the black man in early America supports McKissick's argument that

> the slavery in the United States was probably the most oppressive form of slavery the world has ever seen. In every other slaveholding culture, the slave had a few basic rights: he was already recognized as a human being—however unfortunate or servile.

One writer has vividly described the totality of the oppression:

> The American colonies devised one of the most rigid systems of slavery. The logic of the law dictated this result.

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1 H. Catterall, *Judicial Cases Concerning American Slavery and the Negro* 9 (1968) (quoting 2 Rushworth 468 (1569)).
3 F. McKissick, *3/5 of a Man* 24-25 (1969) [hereinafter cited as McKissick].
4 Id. 24.
5 Id. 35.
If the man were a slave and the property of another, this property interest had to be recognized in all of its implications. The innocent legal relation, however, was not formulated in toto at any one time. It was gradually devised out of necessity because, if any one block were not added, the whole structure would have collapsed of its inherent illogic.\(^6\)

For McKissick, the crowning degradation was the constitutional provision which provided the source for the title of the book:

Representative and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.\(^7\)

While white Americans congratulate themselves on the strides toward equality that have been made, McKissick chastises them for their continuing racism and economic exploitation. In a manner reminiscent of Karl Marx, when he predicted the world-wide revolution of the proletariat, the author foresees a universal movement among black and colored people to resist and destroy capitalism and its concomitant exploitation and racism.\(^8\)

According to McKissick, such a revolution would be justified because the government has consistently neglected the black man. When it has acted, it has done little more than provide ceremonious gestures—pomp and circumstance designed to mislead the Negro into believing that he has made progress. What surprises him is not that a revolution may be imminent, but that it has been so long in coming.\(^9\) He believes that since the Emancipation Proclamation, the government has consistently miscalculated the measures necessary to secure for the Negro his rightful place in American society. Examples of the mistakes he sees include the failure to provide forty acres and a mule for every freed slave as promised;\(^10\) the failure to enforce the desegregation decision of the Supreme Court in 1954;\(^11\) the failure to send voter registrars south to enforce the Voters Rights Bill of 1965;\(^12\) and the complete failure to understand the significance of the 1963 march on Washington, which, in his opinion, was the culmination of the era of nonviolent protest.

\(^{6}\) Alpert, supra note 2, at 546.
\(^{7}\) U. S. Const. art. 1, §2, cl. 3 (1789).
\(^{8}\) McKissick 27-28.
\(^{9}\) "It is remarkable that the era of nonviolent protest has lasted so long." Id. 136.
\(^{10}\) Id. 36.
\(^{11}\) Brown v. Board of Educ., 347 U.S. 483 (1954); see McKissick 36.
\(^{12}\) McKissick 37.
of years of suffering and toil that marked the beginning of the black revolution.\textsuperscript{13}

When he vilifies white America for its racism and failure to combat it, McKissick includes the courts as part of white America. Having reminded the reader of the infamous \textit{Dred Scott} decision of Mr. Chief Justice Taney,\textsuperscript{14} which he describes as a "constitutional study in hypocrisy, weakness, and gutlessness," he proceeds to characterize the \textit{Slaughterhouse Cases}\textsuperscript{15} and the \textit{Civil Rights Cases}\textsuperscript{16} as violative of the duty of the Supreme Court to use the Constitution in "its highest sense—using it to attack the most pervasive evils of the society."\textsuperscript{17} Referring to the separate but equal doctrine of \textit{Plessy v. Ferguson},\textsuperscript{18} later rejected in \textit{Brown v. Board of Education},\textsuperscript{19} he makes the following criticism:

The court system has repeatedly been used to advance the racism of America and to prevent Blacks from obtaining the power that is rightfully theirs. . . .

. . . .

This decision was particularly insidious in view of the racist social structure of America. For in a racist society in which one race is in control, "separate but equal" can never be a reality. It is apparent that the decision . . . was intended to provide time.\textsuperscript{20}

Regarding \textit{Brown} itself, he writes:

The Supreme Court took fifty-eight years from the first mistaken decision to decide that the doctrine of "separate but equal" was invalid and unworkable. It took the Supreme Court fifty-eight years to understand what "separate" meant; it took that long for it to discover what "equal" meant. It took the Supreme Court fifty-eight years to recognize its responsibility to America.\textsuperscript{21}

That those decisions could easily have been avoided greatly disturbs the author. The universal civil and human rights attributable to the Constitution of the United States and the Declaration of Independence transcend racism, and:

\textsuperscript{13} Id.
\textsuperscript{14} 60 U.S. (19 How.) 393 (1856).
\textsuperscript{15} 83 U.S. (16 Wall.) 36 (1873).
\textsuperscript{16} 109 U.S. 3 (1883).
\textsuperscript{17} McKissick, 71.
\textsuperscript{18} 163 U.S. 537 (1896).
\textsuperscript{19} 347 U.S. 483 (1954).
\textsuperscript{20} Id. 74-75.
\textsuperscript{21} Id. 78.
If interpreted justly, in full awareness of . . . conditions, and if applied in a consistent fashion, the Constitution can be converted into a document of liberation for Black America.\textsuperscript{22}

Although he is satisfied with some of the recent decisions of the Court,\textsuperscript{23} McKissick advocates overall changes in the judicial system to foster equal protection. Examples of such changes include his suggestion that the judiciary abandon the rule of construction avoiding the decision of constitutional issues if it is possible to dispose of a case on other grounds, and that it substitute the principle of deciding constitutional issues first, especially when the thirteenth and fourteenth amendments are involved. He further recommends that all cases involving the Bill of Rights or the thirteenth and fourteenth amendments be advanced on the docket.\textsuperscript{24}

Objections to both of these suggestions are understandable. The Court’s reluctance to decide constitutional issues when there are alternative grounds available is predicated on a valid belief that the sweeping effect of constitutional decisions should not be underestimated, and the facts of an individual case often make it inappropriate for establishing a general law. Such a principle would also encourage inventive plaintiffs to conjure up colorable constitutional issues on which the courts would be forced to expend much time and energy, whereas a case might be disposed of more simply with the same result on other grounds. Bona fide claims would be lost amidst the deluge. Similarly, the idea of accelerating cases involving specific constitutional provisions requires an extensive screening process if the implementation of the policy is not to engulf the dockets of the courts with a multitude of constitutional suits. This procedure would postpone decisions on crucial issues rather than accelerate them.

But the most valid criticism one can make of McKissick’s view of the judiciary is that he places the burden of social reform on the wrong shoulders. The judiciary can prevent overt discrimination—at least in those cases before it—but it cannot serve as the architect of economic reform. And economic reform is really the crux of the problem of inequality. Little more than six years ago, President John F. Kennedy described the birthright of a Negro child:

The Negro baby born in America today, regardless of the section of the nation in which he is born, has about one-half as much chance of completing high school as a white baby born in the same place on the same day, one-third as much chance of completing college, one-third as much chance of becoming a professional man, twice as much chance of becoming a professional man, twice as much chance of becom-

\textsuperscript{22} Id. 55.

\textsuperscript{23} \textit{E.g.}, Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).

\textsuperscript{24} McKissick 55.
ing unemployed, about one-seventh as much chance of earning $10,000 a year, a life expectancy which is seven years shorter, and the prospects of earning only half as much.\textsuperscript{25}

Although he was an advocate of civil rights legislation, and an avid supporter of court decisions reducing the level of discrimination in the country, the late Senator Robert F. Kennedy realized that laws and courts are inadequate to eradicate poverty:

The dilemma of poverty faced by the society and the polity is the gap between expectations and reality. Great expectations were the creation, not of idle political promises, but of the country itself and its history. . . .

National action is not enough because the law is not enough. The right defined by law is not enough whether it concerns education or civil rights. We have a new civil rights law, and many of us live in states that have additional public accommodation and fair employment laws. But a decade of painful struggle for compliance must make us all wonder whether mere submission to the process of law is enough.\textsuperscript{26}

No one can accuse McKissick of not knowing what the problems are. He surely subscribes to Robert Kennedy's description of Negro unrest:

"The essential cause is poverty . . . ." \textsuperscript{27}

But his solutions are too simple, as exemplified by his statement:

I contend, however, that every time a Black Man is refused service, assistance, or advice simply on the basis of his Blackness, a constitutional right is violated.\textsuperscript{28}

Although one cannot dispute his goal, he can severely criticize McKissick's undue reliance on the courts. Even when the Supreme Court "outlaws" discrimination, as in \textit{Brown}, there is a large gap between the decision and its enforcement. If the Supreme Court were to rule tomorrow that "[a]ll discrimination of any kind based on race is illegal," it would do little to cushion the plight of the Negro. Because the Court can only act in the individual case before it, and because it has no enforcement power, its power to reconstruct society is quite limited. The Supreme Court and all lower courts can and should deter overt discrimination, but without a redistribution of capital, the position of the black man will not greatly improve.

\textsuperscript{26} \textit{Id.} 17-18.
\textsuperscript{27} \textit{Id.} 10.
\textsuperscript{28} McKissick 83.
It would be unfair, however, to imply that McKissick views the legal system as the sole answer to the problems of the Negro. He realizes that a general overhaul in the philosophy of the nation is needed, and recognizes that the white community must relinquish some of its power, money, and resources to the blacks. As part of the relinquishment, he recommends that land be ceded to the nation of Islam for creation of an independent black state, and that ownership of land in Harlem, Bedford-Stuyvesant, and other predominantly Negro areas be transferred to the black residents of each community, who would then operate all facilities and services themselves. Additional suggestions include the subsidization of those black people who want to live and work in Africa, and the establishment of black universities.

One can easily quarrel with many of the proposals, but the importance of the book lies not so much in the solutions offered as in the communication of a mood composed of two feelings. First, a feeling of pride has been born in the black community—pride in black history, black heritage, and black leaders, both past and present. The book introduces men like W. E. B. DuBois, founder of the Niagara movement (forerunner of the NAACP); Marcus Garvey, founder of the Universal Negro Improvement Association; and discusses contemporary leaders including the Honorable Elijah Muhammad, the late Malcolm X, Muhammed Ali, and the late Dr. Martin Luther King, Jr. For the author, black history and racial pride are the beginnings of “black nationalism” and group identification which are prerequisites to survival.

Growing unrest and impatience with delays in social progress comprise the remaining element of the mood. Eldridge Cleaver, Stokely Carmichael, and H. Rap Brown are not mavericks; they represent a sense of urgency that exists today among blacks. Inherent in this urgency is a rejection of supposed half-hearted measures that do more to salve the conscience of the legislators than to alleviate suffering. For McKissick, the creation of the Office of Economic Opportunity, the passage of the Civil Rights Bill of 1964, and the passage of the Voter Rights Bill of 1965 represent piecemeal solutions intended only to buy time and ease the guilty conscience of the nation. Failure on the part of political leaders to recognize the immediacy and urgency of the feelings of the black people can only result in bloodshed.

29 The mood of this book makes it a must for all Americans. The mood reveals the depth of the anguish and anger in the Black community. I hope White America understands the mood. If we do, then we will know that tear gas and armed might are no answer to our problems.

W. O. Douglas, Foreword to McKissick at 9.

30 McKissick 34-35
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CITIZEN POLITICS. By James David Barber. Chicago, Ill.: Markham Publishing Co., 1969. Pp. ix, 199. $5.95


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