

## BOOK REVIEWS

COURTS ON TRIAL. By Jerome Frank. Princeton University Press, Princeton, 1949. Pp. xii, 429. \$5.00.

This is an extraordinary book. The author says it is intended primarily to inform the layman about "court-house government." The phrase is the author's effort to get away from the word "law" which for him has acquired unjustified implications of a science and a system.

The chief purpose of the book is to convince the layman that nearly every case stands on its own facts and that the human frailties of parties, witnesses, lawyers and judges render it highly improbable that the facts as determined in court will bear even a close relation to the actual facts of the case. Thus, he concludes, the results of litigation are well-nigh unpredictable. Law is not a science, but a none-too-honorable art.

Much more than half of the 429 pages are devoted to the piling up of anthropologic, psychologic and other material to convince the layman that it is impossible for his courts to ascertain the truth. All that is really said could have been better and more intelligibly said in one-third the space, though perhaps the lay reader would not have been so deeply impressed by the profundity and learning of the author.

However, the heaviness of the layman's journey will be lightened by less jovian passages. The judicial process is described repeatedly as "guessy", no doubt a rival for the Rooseveltian "iffy". Lawyers are described as "rule skeptics", "fact skeptics", "wizards" and "magic-men". There is a chapter which compares the interpretation of a statute to the interpretation of a musical composition. And in the profoundest chapter,—that dealing with the trial judge's gestalt,<sup>1</sup>—it is suggested that the judge should sing his decisions. Witness this: "His response to that testimony is, in part, wordless knowledge. To be completely articulate, to communicate that response satisfactorily, he would be obliged—as a once popular song put it—to 'Say it with music.' *For his emotion-toned experience is contrapuntal*" (p. 174) (Italics supplied).

Of the materials cited and quoted, the author's own earlier writings represent roughly one-third. This must not be laid to egotism; an explanation less complimentary to the reader is found in the preface. "In the following pages, I have often cited or quoted from my own writing. I did so not out of egotism but laziness, for what I had said elsewhere was most readily accessible to me." Indeed the work seems to be a mosaic of the earlier writings, interlarded with some new matter.

The prescription for better court-house government is that trials become less fights and more searches for truth. But we are warned that if all the devices suggested should be adopted we should still fall far short of ascertaining the true facts of cases.

Judge Frank has re-used an earlier diagrammatic scheme to elucidate his views. He depicts a trial thus  $R \times F = D$ .  $R$  is a rule.  $F$  is the facts. Apply the rule to the facts and you get  $D$ , the decision. Now the Judge is a "rule skeptic," and, until almost the end, we are left in doubt as to what he would do to the rules. With a sense of relief we find the answer on page 411: "Rules we must have." The layman will have difficulty in ascertaining just who is to make the rules. He is exposed to the anthropological approach and to natural law, to classicism and romanti-

1. The lay reader, of course, knows the psychology involved in this conception.

cism and to justice and emotion, but, it seems he is left to make his own choice as to the genesis of rules.

But, as has been said, the unascertainable facts will create most of the lay reader's dismay. To improve court processes in ascertaining the facts many plans which have long ago been suggested are here discussed—such as the abolition of the jury, government aid to needy litigants, the use by the court of psychologists to analyze witnesses, recording jury-room deliberations and even reproducing trials in appellate courts by television.

As additional improvements in court-house government, Judge Frank would reform general legal education and provide special education for those intending to become trial judges, *i. e.* fact finders. He condemns the case system. But his argument hardly required his characterization of Langdell as "a brilliant neurotic," (p. 225) as of a "neurotic escapist character," (p. 227) and as having been guilty of "neurotic wizardry" and of a "morbid repudiation of actual legal practice" (p. 231).

The author's complaint of the case system is that it deals only with the Rs,—the rules of law,—(which are infirm enough) and totally ignores the much more important matter of how the Fs, the facts of cases, are distorted, or missed, or concealed in trials. To cure this he would have the law schools educate their students in history, ethics, economics, politics, psychology and anthropology, and then have the schools imitate as nearly as possible, the old-fashioned law office, where the registered student at law learned by doing and by association with members of the bar who were doing the day-to-day work of the profession. It is submitted that no law school can reproduce that atmosphere of actuality. Rather than attempt it, they had better surrender the job of training to the practicing profession, by going back to office training. But if they were able to do what Judge Frank suggests might it not make students more adept in the art of twisting or suppressing the facts—practices he deprecates?

The suggestion that trial judges should be trained for their office seems impractical under our system.

What Judge Frank has taken 429 pages to say is summed up in a brief chapter "Questioning some axioms" (p. 419 ff.) in which he suggests he is applying the "non-Euclidean" method to traditional legal thinking. If the lay reader will endeavor to avoid the explanation of the non-Euclidean process and will go to the propositions stated, he will have a fair idea of what it is Judge Frank thinks "court-house government" and those concerned in its operation ought and ought not to do. He will find little new in the upshot, beyond what has been less "learnedly" presented by others.

Owen J. Roberts.†

THE HOOVER COMMISSION REPORT ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT. McGraw-Hill Book Co., New York, 1949. Pp. xvi, 524. \$3.75.

The production of a good book review is no mean assignment in any case. In this instance it is trebly difficult. The volume under scrutiny is a reproduction of the Hoover Commission Reports less the concluding report and all the dissents and separate statements dealing with various

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matters within its wide sweep. The reviewer must, therefore, consider the usefulness of the McGraw-Hill reproduction of the "Report." He, then, confronts the task of "reviewing" the Commission's work as articulated in its reports. Finally, considerable time has elapsed since the final report was submitted and that calls for comment on the action taken or proposed thus far to effectuate the recommendations of the Commission.

The Commission on Organization of the Executive Branch of the Government was organized pursuant to Public Law 162, Eightieth Congress, approved July 7, 1947. It was a bi-partisan body, with six members from each of the two major parties. Four members each were appointed by the President, the Speaker of the House and the President of the Senate. The members elected their own officers. The Chairman was, of course, former President Herbert Hoover. The Vice-Chairman was Dean Acheson, who now holds the State Department portfolio. The statute imposed upon the commission a responsibility to examine the organization and administration of the entire executive branch of the government and to make recommendations directed to greater economy and efficiency and to improved services. Congress did not direct that the inquiry reach into the domain of substantive national policy.

The Commission approached its task by dividing its work into some 24 functional and departmental segments and creating a "task force" to do "spade" work and assist in making recommendations in each area. Some 300 persons from educational, professional, business and governmental circles were brought into the task force operations. In several areas consultant firms or organizations were engaged to conduct the projects. Thus, the Post Office study was undertaken by Robert Heller & Associates, Inc., management engineers, Cleveland, Ohio. Two nationally-known accounting firms participated prominently in the Federal Business Enterprises Project.

The 19 task force reports were all published in January 1949. During the next two months the Commission submitted 18 separate reports to the Congress, each covering one or more functional areas of Commission inquiry. A separate report was filed on each department except the Department of Justice. The basis for the exception was the pre-occupation of Justice with law and law enforcement—matters the Commission considered outside its scope. A concluding report, designed "to sum up the common thinking" of the group on the basic problems within its assignment, was filed in May 1949.

Our first inquiry here relates to the usefulness of the McGraw-Hill reproduction of the Hoover Commission Report. The publisher's preface is not clear as to the purpose of the volume. The closing paragraph tells us of an asserted necessity for a single volume which quickly answers the question "What did the majority of the Commission determine?" "Determine" presents semantic difficulties which I will not labor. Nor will I debate the point of necessity. What I do observe is that while the volume is convenient and useful for anyone who wishes to be reasonably well-informed on the work of the Commission<sup>1</sup> it is unsatisfactory for reference because it is incomplete. The omission of all footnotes and separate statements recording dissenting opinions or supplementary remarks, and the omission of the concluding report with its complete summary of reports and supporting documents and its index to commission reports and pub-

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1. For a summary of the report, see 9 *PUB. ADMIN. REV.* 73 (1949). The recommendations are digested in a mimeographed publication of the Division of Administrative Management of the Bureau of Budget, dated September 30, 1949.

lished task force reports, greatly restrict the usefulness of the book to a student of public administration.<sup>2</sup> The most the Commission could do was recommend; it is the weight of ideas and not of members which should count. Yet, we get here no insight into minority opinion.

One outstanding example of significant minority opinion was the proposal by Vice-Chairman Acheson and Commissioners Aiken and Rowe that a Department of Welfare be established by the simple device of re-naming the Federal Security Agency. The majority had proposed that the Federal Security Agency be abolished and a new department of cabinet rank be established to administer social security services, an education service and Indian Affairs. There were substantial differences of opinion as to the jurisdiction of the new department. The minority opposed, for example, transfer of public health functions from Security (Welfare) to a new United Medical Administration. The President acted upon the minority proposal in submitting Reorganization Plan No. 1 of 1949. Congress "vetoed" the plan.<sup>3</sup>

This reviewer readily acknowledges that he is far from qualified to evaluate all the numerous findings and recommendations of the Hoover Commission. He is, however, prepared to offer some general and some specific observations which may be of interest. It should be set down at once that he shares the widely-held opinion that the Commission has collected data and made recommendations which constitute, in sum, a splendid contribution to the cause of good government. It is believed fair to remark, at the same time, that many of the important ideas put forward had previously been advanced by others, including President Roosevelt's Committee on Administrative Management. In one or two instances it left its proper sphere to deal with matters of substantive legislative policy. Thus, the majority recommended that a modest government corporation be set up to guarantee second mortgage land purchase loans to "good" tenant and other farmers after they had obtained first mortgage loans from a Land Bank on its usual terms and that the Farmers Home Administration type of direct loan to tenant farms be superseded. This suggests abandonment of the policy of aiding poor tenant farmers who have no other sources of credit.<sup>4</sup>

The fragmentation of the work of the Commission through task forces was a useful fact-getting procedure but its employment made it difficult for the Commission to take a whole view. It did not enhance perspective.

In its first report the Commission adopted the basic principle of organizing the executive branch according to major purpose. It was at first thought that by effective allocation of administrative units by purpose to the appropriate departments, the total number of agencies, including cabinet departments, could be reduced to one-third of the pre-commission figure. Ultimately, however, the Commission recommended a reduction from 52 to 30, including ten cabinet departments.

Fundamental in the Commission's approach was adherence to the proposition that the President and the department heads should have au-

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2. The concluding report contained four recommendations not previously made. The exact date of publication of the McGraw-Hill book may have preceded the filing of the concluding report, but the publishers could have awaited its appearance.

3. Actually, it was disapproved in the Senate on August 16. It is enough to defeat a plan for either house to adopt, within 60 days of transmittal, a resolution stating that it does not favor the plan. Pub. L. No. 100, 81st Cong., 1st Sess. § 6 (June 20, 1949).

4. See the dissent and separate statement of Vice-Chairman Acheson and Commissioners Pollock and Rowe, accompanying the official report on Federal Business Enterprises, at p. 102.

thority matching their responsibilities and thus be truly accountable for performance. This principle had been violated by direct grants of statutory powers to subordinate officers in the exercise of which they were not subject to the control of their superiors.

This was all very fine but it would still leave the President with a staggering task of executive direction and integration. To cope with this problem the Commission made a number of recommendations looking to the provision of increased staff services for the President. I am not the first to express doubt that this attack holds much promise.<sup>5</sup> No matter how effective the staff job of assembling and digesting data for presidential consideration, it is not to be expected that one person can cover the whole ground thoughtfully and well.

The possibility that the cabinet might again come to share with the President the formulation of top-level policy was not regarded with favor by the Commission. The emphasis upon cabinet committees and upon staff services attached to the President's office moves with the trend away from anything akin to cabinet government.<sup>6</sup> It is true, at the same time, that the Chief Executive himself may, without benefit of Commission reports, make greater use of the cabinet as a council of advisers. The Commission's dictum that the department heads are not as individuals fitted to advise the President on every subject is hardly to the point. They are not expected to be experts. Rather, they too are top-level executives who should have the breadth of view and capacity for decision to enable them to participate effectively in group consideration of major problems. I suggest that "kitchen-cabinet" government is not a very attractive alternative.

A separate recommendation of the Commission proposed that the President be granted continuing authority to promulgate reorganization plans covering all agencies of the executive branch subject only to Congressional veto by concurrent resolution. By this means the President might effect a major reduction in the number of agencies reporting directly to him. Congress provided the authority by enacting the Reorganization Act of 1949.<sup>7</sup>

At the same time that stress was being imposed upon the centralization of authority the Commission was coming to the conclusion that the decentralization of certain types of operations should be effected. The Government had grown too big and complex for services in such areas as personnel, budgeting and supply, which were common to all agencies, to be administered effectively on a centralized basis. This led the Commission to recommend decentralization both between a central service agency and an operating unit and as between headquarters and the field service within an operating unit. The Commission recognized that some but, in the opinion of the members, not enough, decentralization of services had already been effected. It would extend the policy to personnel recruitment and administration generally, to the primary task of preparing budget estimates and to purchasing of other than common-use items.

In projecting a typical organization of a federal agency, the Commission emphasized the laying of a clear line of authority from the President

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5. See *Finer, The Hoover Commission Reports*, 64 POL. SCI. Q. 405, 414 (1949).

6. It is true that constitutionally the responsibility for decision is that of the President and that an outright cabinet system with full collective responsibility would not be consistent with the constitutional plan. The Commission was as free, however, to recommend constitutional amendments as legislation relative to the organization of the executive department.

7. Pub. L. No. 109, 81st Cong., 1st Sess. (June 20, 1949). See note 3, *supra*.

down through the hierarchy of heads of administrative units. As in the case of the Office of the President, great store was laid on the provision of adequate staff services for the responsible head. Thus, within the framework of the favored plan for a cabinet rank department were a general counsel, chief financial officer, chief supply officer, chief management research officer, publications officer and director of personnel, all working directly under an administrative assistant secretary. Again, as with the sphere of the President, the Commission bespoke for the department head wide discretion, with presidential approval, to effect internal reorganization.

In the realm of fiscal management, personnel, supply and housekeeping services, which overlap all operating agencies, the Commission offered a number of important suggestions. The proposal that the Government employ a "performance budget," which analyzes proposed outlay according to programs and functions instead of things and services to be paid for and sets capital outlay items apart from operation and maintenance, is a particularly valuable contribution. I do not intend to detract from it by remarking that this reform should have been accomplished long since. Under the old practice Congress could not satisfactorily perform its functions of appropriating funds and reviewing performance because budget items were not arranged by work to be done and there was no showing of the relationship between the work involved in a program and its cost. The administration is having the 1951 budget prepared on a performance basis. The new act governing the organization of the Department of Defense expressly requires Defense budgeting to be on a performance basis, as far as practicable.<sup>8</sup>

Notable among personnel recommendations was the proposal that responsibility for the administrative functions of the Civil Service Commission be placed upon the chairman alone in order that there might be effective direction. The three-member bi-partisan commission would continue to perform its rule-making and adjudicative functions as before. This recommendation has been effectuated by Reorganization Plan No. 5 of 1949, which became effective August 20, 1949.

The personnel recommendations as a whole, however, leave much to be desired. We need better personnel and less turnover in the federal service, but the Commission has not been helpful as to the kind of persons needed or how to recruit them. The general impression I have gained is that, while the Commission's thinking was not dominated by the business-management fixation of some of the task force personnel, the members did exhibit what I would describe as an excess of faith in management tools and techniques.

Responsibility for supply, records management and operation and maintenance of public buildings was formerly divided among various agencies at different organizational levels. The Commission urged centralization in an Office of General Services reporting directly to the President. Congress responded by an Act effective July 1, 1949, which created a General Services Administration to be headed by an Administrator of General Services.<sup>9</sup> This is a major reorganization measure. It transfers to the new Administration the affairs of the Bureau of Federal Supply in the Department of the Treasury, those of the Federal Works Agency and its constituent agencies and those of the National Archives

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8. See § 403 of the National Security Act of 1947, added by Pub. L. No. 216, 81st Cong., 1st Sess. (August 10, 1949).

9. Pub. L. No. 152, 81st Cong., 1st Sess. (July 1, 1949).

Establishment. In addition, the affairs of the War Assets Administration are transferred for liquidation.

The Commission's principal suggestion with respect to the independent regulatory commissions was that their functions which were executive in character should be transferred to appropriate executive departments. This is a sound general approach along functional lines. It is in harmony, moreover, with the proposition that a single administrative head is better suited than a body of commissioners to act decisively and responsibly in conducting public business other than rule-making and adjudication.

There is not space to consider the scores of recommendations as to transfers of agencies and functions between departments and as to internal reorganization within departments. Many are either widely supported or have stimulated little opposition; some are the basis of real controversy. They all merit careful consideration. The Commission, in the concluding report, pointed very effectively to the interrelationship of the proposals and to the danger of piecemeal attack.

Action responsive to Commission recommendations taken prior to adjournment of the first session of the Eighty-first Congress was very impressive. A substantial number of recommendations, perhaps 35 or 40 per centum, could be effectuated simply by administrative action.<sup>10</sup> It has been estimated that another 40 per centum was considered in Congress.<sup>11</sup> The President has submitted eight reorganization plans under the 1949 act. Seven were submitted June 20, the day he signed that Act. The first, to establish a Department of Welfare, was, as we have seen, "vetoed" by Congress. Plan No. 8 proved unnecessary; its object was to convert the National Military Establishment into a Department of Defense but that was accomplished by act of Congress.<sup>12</sup> Plan No. 2 transferred the Bureau of Unemployment Security from the Federal Security Agency to the Department of Labor. Internal reorganization of the Post Office Department was effected by Plan No. 3. The National Security Resources Board and National Security Council were, by Plan No. 4, transferred to the Office of the President. Plan No. 5 conferred the administrative functions of the Civil Service Commission upon the Chairman alone, and Plan 6 vested in the Chairman of the Maritime Commission responsibility for appointment and supervision of personnel and for administrative expenditures. Plan 7 transferred the Public Roads Administration from the Federal Works Agency to the Department of Commerce.

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SUCCESSFUL TRIAL TACTICS. By A. S. Cutler. Prentice-Hall, Inc., New York. Pp. 317. \$5.35.

Many able trial lawyers feel that their art cannot be learned from a book.<sup>1</sup> However, the author has done an outstanding job, especially in preparing this simple and well-arranged summary of the varying factors which go to make up success in trial practice.

10. See the Bureau of the Budget Digest, cited *supra* note 1.

11. See Progress on Hoover Commission Recommendations, Senate Committee on Expenditures in the Executive Departments, SEN. REP. No. 1158, 81st Cong., 1st Sess., at 3. This is a valuable publication in which are reproduced agency comments on the recommendations.

12. Pub. L. 216, 81st Cong., 1st Sess. (August 10, 1949).

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1. See Stryker, Book Review, 24 IND. L.J. 615 (1949).

These things making for success are basic and do not vary much between jurisdictions; however great the superficial differences may be between, for instance, New York or Chicago practice, and practice in rural communities of the South and West. Thorough preparation, emphasized by Mr. Cutler, pays dividends in any court. Simplicity of manner, an avoidance of pomposity and pretense, are good business before any jury, anywhere. It is within this area of common experience and events that a book such as this will find its greatest usefulness. The weakness of reliance on any such book is that it may result in a mechanically detailed preparation which lacks that flexibility needed to meet unexpected tactics and counterattacks. The author himself notes that a trial lawyer must be something like a cat—able to land on all four feet, no matter what he encounters.

It is probably this resilient quality, the ability to improvise to meet the unexpected, which is one of the most common attributes of all good trial lawyers.

Of necessity, the author had to mention the inadequacies of modern legal education, in the field of really preparing students for down-to-earth courtroom work. Our theory of justice is often referred to as being "adversary" in nature. It is a fight and a trial at arms, and Mr. Cutler feels law schools do not really teach their students what they need to join in the fray. We are always told that experience is the greatest teacher. Doubtless, every young law school graduate wonders how he is to get this experience. Perhaps society should wonder who will protect his clients from his mistakes while he is acquiring the experience. The principle of legal internship has been considered for a number of years. The clerkship requirement, as found in Pennsylvania, has undoubted value—in those jurisdictions where it is practical; where there are a practicable amount of openings each year. Unfortunately that is not the case everywhere. The author feels that considerable value would attach to simply making attendance at court, as a spectator, part of the curriculum. Even the courtroom hangers-on and attendants absorb and pick up an astonishing amount of practical courtroom knowledge, after a time. It is the exposure which does it, of course. And ex-court reporters, it has been said, generally make thorough lawyers who don't slip on procedure and courtroom protocol. Unfortunately, not everyone can have that background.

The author takes his reader through the trial of a lawsuit, leaving out very little along the way. He does not overlook pointing out that judges are human beings, possessed of foibles and quirks of personality. He includes an excellent chapter, titled with some understatement: "Court Room Conditions". There is a touch of humor at the right places, which is encouraging to that school of thought which sees no reason why legal texts should compete with the dictionary for monotony.<sup>2</sup>

Mr. Cutler apparently believes in the detailed and meticulous questioning of each potential juror called to the box. Here many experienced lawyers would disagree. Undoubtedly at times, it is psychologically unwise to drag out the examination of jurors; especially if one's opponent has already made that mistake. Every lawyer should be first a good investigator. Where conditions make it possible, an advance investigation of the jury panel will have given the attorney sufficient background to skip much lengthy questioning of the jurors. Naturally such investigation is more difficult in big-city practice.

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2. In this connection, an English jurist said long ago that he imagined Hell to be a place where the inhabitants were compelled to sit about with nothing to do but read volumes of Hansard (Reports).

The chapters on cross-examination and rebuttal do an excellent job of presenting that fine old adage: "Learn when to let well enough alone".

Lengthy and aggressive cross-examination is a glamorous feature of the lawyer's trade as plied in the movies and on the airways. In the dusty atmosphere of a real-life courtroom, it often backfires in a most distressing manner. The author's examples, as elsewhere, are entertaining.

Despite the author's opening theme that every lawyer should understand and be ready to undertake trial work, it seems that the current trend is in the opposite direction. The general practitioner appears headed for the role of an extinct species, at least in city jurisdictions. Mr. Cutler points out that from time immemorial the English Bar has been split into barristers and solicitors. More and more, American practice seems to be approaching that situation in fact, if not in name. To an outside observer, metropolitan practice appears to have been dividing that way for generations. There is a definite minority category of trial attorneys, and a huge majority of what Mr. Cutler calls "office lawyers", who are gradually becoming further divided among themselves into various non-trial specialties and sub-specialties.

Away from the large cities, the general practitioner survives in law as in medicine. Perhaps an anachronism, but a happy one. As the author notes in his chapter advising the association of local counsel when practicing in small communities, the general practitioner draws a will in the morning, tries a civil action in the afternoon, and defends a criminal action on the following morning. In between times, he gives out a multitude of advice on a rash of subjects. Because there are many small and medium-sized cities where specialization has not yet erased the general practitioner, he is not necessarily a "country lawyer" in the traditional sense of the term. As Mr. Cutler implies, this sort of training, arduous as it may be initially, ultimately gives a better background of trial experience than is possible in most metropolitan practices.

It is obvious that the author has been through the rough-and-tumble of practical trial work for a number of years. He knows there are many things, not appearing between the pages of books, which are needed for success in court. He concludes his book by telling how to accept losses and take defeats; that is by no means the least important factor of all.

Aside from a few minor procedural references, this text is general enough to be useful anywhere. It is suitable for the reading list of any law student or young practitioner. Older lawyers will find it entertaining and often coinciding with their own experience. Because it will not coincide in every particular, points up the fact that in law, as in everything, there are many roads to the top of the hill.

*William S. Murray. †*

COMMENTARY ON THE UNITED STATES JUDICIAL CODE. By James William Moore. Matthew Bender & Co., Albany, 1949. Pp. viii, 684. \$9.00.

MOORE'S FEDERAL RULES AND OFFICIAL FORMS. Matthew Bender & Co., Albany, 1949. Pp. 481. \$5.00.

About a decade ago when the *Erie* case and the Federal Rules of Civil Procedure turned the world of the federal judge and practitioner topsy-

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turvy, the greatest help in adjusting to the new order came from Professor James William Moore in his 3-volume Treatise. Providing guidance in the critical early years, he greatly eased the transition from *Swift* to *Erie* and from conformity to uniformity. In the intervening years his influence upon decisions interpreting the Rules has been unique. It is a rare case reported in Federal Rules Decisions that does not cite Moore.

An Act "To revise, codify, and enact into law title 28 of the United States Code entitled 'Judicial Code and Judiciary'", was approved by the President on June 25, 1948 and became effective September 1, 1948. This new Code is a change far less sweeping than *Erie* or the Rules. Nevertheless here, too, the profession needs and will welcome Moore's guiding hand. The objective of the Code, we are told, is "repair and modernization of the federal judicial system without basic alteration of the main structure" (p. 74). Thus it is "a conservative revision that avoids large controversial changes, but without hesitating to make important changes that were justified to the vast majority of those impartially concerned, although unsatisfactory to special interests and special pleaders" (p. 72). There are changes respecting Venue, Removal, Federal-State Injunctions, Jurisdiction by Assignment, etc. The scope and purpose of these "repairs and modernizations" are intelligible only in the light of background. The Reviser's notes, while helpful for the most part, are at times altogether cryptic. Moore, as special consultant to the Revisers, is in an unusually favorable position to give the further illumination which is needed.

The Revision of the Code has required amendment of some of the Rules. These changes are treated in Moore's Federal Rules. In showing the impact of the Code on the Rules the author is again in a unique position, since he served as adviser and draftsman in formulating both the original Rules in 1938 and all the amendments during the last ten years. Moore's Federal Rules is a pamphlet reprint of the Rules (as amended in 1939, 1946 and 1948) along with comments by the author showing the changes and reasons therefor.

The title may suggest that the Commentary is in the same form—a reprint of the Code supplemented with annotations and notes. Not at all. It is a coherent, scholarly, integrated text. It is not, however, a hornbook. It assumes elementary knowledge of the Federal Judicial System, and it probes deeply into selected problems rather than surveying the whole field sketchily.

Eventually the materials in the Commentary will be distributed throughout the second edition of Moore's Treatise, of which Volumes II and III are now available. The Commentary is thus an interim publication designed to bring out the author's views of the new Code in advance of the time-consuming process of incorporating them in the Treatise. Since Volumes II and III deal primarily with the Rules and much of the material of the Commentary is a necessary preliminary to comprehension of the Rules, probably the Commentary should be regarded as Volume I of the Treatise for the time being. However that may be, it is undeniable that the two works are allied in the respect that each is an indispensable tool of the federal bench and bar.

James H. Chadbourn. †

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A SURVEY OF LEGAL PERIODICALS HELD IN BRITISH LIBRARIES. University of London Institute of Advanced Legal Studies, London, 1949. Pp. 52. 7s. Od.

This booklet, brought out as Publication No. 1 by the new Institute of Advanced Legal Studies of the University of London, will be examined with interest, in particular, because it shows the holdings of American legal periodicals in Great Britain. American legal materials are difficult to find abroad. That England makes no exception is not generally known. The Survey discloses to what an extent this is true for legal periodicals.

The Survey covers the main libraries in England and Scotland and thus furnishes a "Union Catalogue" for legal periodicals. England does not have an institution similar to our Union Catalogue at the Library of Congress where all books and periodicals available at the principal American libraries are listed, nor does England have a Union List of Serials.

The Survey shows that the holdings in American legal periodicals are weak, even if compared with the available continental publications. Of early periodicals, Hall's *American Law Journal*, published in Philadelphia from 1808 to 1817 and in 1821, is available at the Middle Temple. The *American Jurist and Law Magazine*, an excellent journal published in Boston from 1829 to 1843, is not listed. The set which the British Museum had before the war may have become a victim of the Blitz, as has a substantial part of the foreign law materials of the British Museum.

Of the modern American law journals, only a few, *e. g.*, Harvard, Columbia, and the American Bar Association Journal, are available in full sets at more than one place. Middle Temple which has the best American collection generally, is also the strongest library in American periodicals. Even there, however, quite a number of the leading periodicals cannot be found. The London School of Economics has some of the missing items, but few in full sets. The libraries in Oxford and Cambridge have even less than have the libraries in London. Research in American law should be difficult to conduct with what is at present available in England and Scotland.

A new era has begun with the creation of the Institute of Advanced Legal Studies in London. The Survey shows that, beginning with 1948, the current issues of practically all American legal periodicals have become available at the Institute. The concentration of American and other foreign law reviews at one place will prove advantageous, especially if the Institute succeeds in obtaining the back volumes. The American law reviews will no doubt be willing to assist in building up full sets. Besides the fact that the mounting interest in American legal writings is gratifying, in this era of growing travel and exchange programs many an American will benefit from the availability in London of legal materials necessary for work in American law. The reviewer can testify to the hospitality extended to visitors by the Institute.

In the preface to the Survey, the hope is expressed that other publications of a similar character will follow. A survey of holdings in American text books will be as interesting as this survey.

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## BOOKS RECEIVED

- AMERICAN POLITICS AND THE PARTY SYSTEM. By Hugh A. Bone. McGraw-Hill Book Co., New York, 1949. Pp. viii, 777. \$5.50.
- CASES AND MATERIALS ON THE LAW OF EVIDENCE. By Mason Ladd. Callaghan & Co., Chicago, 1949. Pp. xxv, 822. \$9.00.
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