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The Courts, The Public, and The Law Explosion, edited by Harry W. Jones

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BOOK REVIEWS

THE COURTS, THE PUBLIC, AND THE LAW EXPLOSION. Edited by Harry W. Jones. Englewood Cliffs: Prentice-Hall, Inc. 1965. Pp. 177. $3.95.

The purpose of this book, in the words of its editor, Professor Harry W. Jones, is "to describe the realities of court functioning in terms that will be intelligible and meaningful to all citizens" (p. 1). It is composed of six essays by a group of outstanding pundits of legal thought. The articles were originally delivered at a session of the American Assembly at Columbia University in 1965, and focus on the problems confronting our court system which are caused by the tremendous flood of litigation since 1945.

The essays do not bring out any startling new problems or solutions. Any person who reads the newspapers or has been involved in litigation knows that our courts are over-crowded with cases. The possible solutions to the problems caused by this condition have been the subject of numerous research projects and articles. Most, if not all, of the information contained in this volume has already been discussed in other journals. It is therefore not a text recommended for the knowledgeable reader. It is probably most suited for college political science courses or for first-year law students.

The most interesting article is written by Edward L. Barrett, Jr., Dean of the University of California Law School at Davis, California. It is a discussion of the problem of mass production of criminal justice. Dean Barrett has conducted extensive research of the criminal court system in California to determine exactly how criminal justice is administered. He has found that the present system of criminal justice is dependent upon the defendant pleading guilty. He contends that even a five per cent increase in not-guilty pleas would place our present system in chaos. The recent Supreme Court decisions relating to criminal procedure will undoubtedly result in more not-guilty pleas. The search and seizure, assignment of counsel, and exclusion of confessions decisions give the defendant a greater opportunity to obtain his freedom even though he may be guilty. Thus, he is more likely to chance a trial. The present case load on the prosecutors, attorneys, and courts has almost reached the breaking point. According to Dean Barrett, the result of this expected increase in cases requiring trial is unfortunately not open to conjecture. He states that criminal justice will become increas-

ingly mass produced with all of its resulting evils. The individual attention to each case, necessary for achieving the social purposes in criminal law, will disappear. This course of action is quickly providing the soil for the growth of wide-spread disrespect for the law, and with it, the terrifying prospects of civil disorder.

Dean Barrett offers certain reforms that should be reviewed by local bar associations. He suggests that the facilities of the lower courts, *i.e.*, magistrate and municipal courts, be improved immediately. The case load carried by the criminal courts should be reduced; many cases can be handled by agencies and administrators with imposition of civil, rather than criminal, penalties. Administration of the courts should be reviewed by experts outside the legal field. Many of the modern data processing techniques should be adopted.

Professor Jones and his colleagues leave no doubt that our courts have been overwhelmed by litigation. However, the remedies for this situation must be carefully studied before they are adopted. Professor Rosenberg, for example, in his article on court congestion, points out that the process of splitting personal injury cases into two trials — the liability portion first and the damage portion, if needed, second — has dramatically changed the outcome of a substantial number of cases. Plaintiffs and defendants each win about fifty per cent of the time; but in the federal district court for the Chicago area where splitting was tried, it resulted in the defendant winning seventy-nine per cent of the time. It is suggested by Professor Rosenberg that before a particular remedy is adopted, extensive and thorough research be conducted to assure that valuable social considerations will not be upset by changes in court procedure.

The book does describe the realities of court congestion and administration of justice. However, it is not one that could be read by the general public, and therefore, seems to have little chance for serving as a means of generating community interest. It does show that a considerable amount of money is being spent on research projects concerned with the practical aspects of the law. It is unfortunate that the projects seem to be centered in a few law schools. If the book has any value to our community, it is that it points out that we are in need of careful and detailed analyses of our local court systems. The contributors to the book, such as Professor Rosenberg, show that solutions to court congestion must be carefully studied and that a particular solution may not be applicable to all communities. Research of the type done by the authors of the book

could be accomplished by our local law schools if proper financial aid was given by the community. If the problems were studied by local groups, then Professor Jones' goal of an enlightened community would surely result.

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OPEN OCCUPANCY VS. FORCED HOUSING UNDER THE FOURTEENTH AMENDMENT: A SYMPOSIUM ON ANTI-DISCRIMINATION LEGISLATION, FREEDOM OF CHOICE AND PROPERTY RIGHTS IN HOUSING. Edited by Alfred Avins. New York City: The Bookmailer, Inc. 1963. Pp. 316. $6.00.

This is the age of the guilt complex. Since the dawn of civilization, man has made life miserable for any fellowman who differs in geographic location, race, color, customs or any other attribute which is noticeable, and even some things which are not noticeable.

Some of the most revolting blood baths in the violent history of our world have resulted from intergroup distrust, or prejudice, if you will. And the more recent examples of Dachau and Auschwitz show, if possible, more brutality and ferocity than the gentle habits of Saracens and Crusaders during the Middle Ages.

Suddenly America, at least, is beginning to suffer terribly from the accumulated guilt of centuries. Since shortly after World War I, this country has, almost entirely by process of law, attempted to eradicate the sins of the past. And since law, whether by judicial interpretation, executive fiat, or legislative enactment, probably tends to reflect the wishes of a majority of the citizens of any republic, it is likely that most Americans tend to approve the steps which have been taken by our various branches of government against discrimination and prejudice. However, the recent endorsement in California of Proposition 14 by such an overwhelming margin (indicating public opposition to fair housing laws) can and should be cited for the contrary proposition.

News and opinion media, community leaders, and liberal politicians have mounted a relentless and noisy attack on all outward symbols of prejudice. Churches, which had been silent for centuries or which even actively assisted the perpetuation of racial and re-

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ligious prejudice, are suddenly terribly disturbed about discrimination, at least the racial kind; apparently, religious prejudice is not yet a mortal sin. An emotional oratory of a dozen or so members of the Maine State House of Representatives caused a proposed antidiscrimination housing bill to pass that body by an overwhelming margin. The bill was ultimately defeated in the Senate.

Into such an environment Dr. Avins has thrust his symposium. Its several articles, with one exception, defend the landowner's privilege of freedom of choice by resort to legal precedent, logic, sociological studies, and fact.

The editor suggests, for example, that antidiscrimination laws tend to perpetuate substandard Negro housing. Desirable low-rent apartments create a sufficient demand so that any landlord who wishes to discriminate may do so without outward indication. The luxury apartment, on the other hand, creates no such demand and, if the landlord continues to advertise it after a Negro has applied for the vacancy, he can be brought into court. Yet the Negro who is thus assisted by the law is the very one who can afford to build his own home, if he so desires. Dr. Avins observes that this result of antidiscrimination housing legislation is analogous to enforcing minimum wage legislation for Elizabeth Taylor.

In the discussion of several modern decisions involving various antidiscrimination housing statutes, the several authors attack the current judicial fancy of reaching, at any cost to the doctrine of stare decisis, a sociologically desirable result, as the judges understand sociology. The new rights granted minority groups inevitably have taken away rights of other citizens once thought to be guaranteed by the Constitution or existing common law.

Discussion of the problems presented by the ever-changing concept version of our Constitution is sober, thoughtful, and low-keyed. The arguments presented are not offered as dogma or the results of revealed truth. Like any argument, they are subject to refutation and counter-argument. More to the point, however, they refute and counter the opposite assertions which pour so freely from the typewriters of our modern liberals.

Yet the swing of the pendulum is inexorable. The defender of traditional property rights against newly-discovered individual rights receives the same consideration today that Martin Luther King would have received in 1875. This symposium will probably either be bitterly attacked or, more likely, ignored.

Some thoughtful readers will have an opportunity to judge the

symposium as a legal, social, and political treatise. They will be well rewarded in intellectual stimulation. A few may even agree with Dr. Avins and his associates.

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