Yale Law Journal

Volume 35
Issue 6 *Yale Law Journal*

Article 7

1926

BOOK REVIEWS

BOOK REVIEWS

Justice and the Poor in England. By F. C. G. Gurney-Champion. London, George Routledge & Sons, Ltd., 1926. pp. x, 245.

The foreword, signed by the Lord Bishop of Manchester and other eminent religious leaders, justly says, "This book is a complete study of the administration of justice in England and Wales, as it affects the poor". As such it is an invaluable addition to the gradually accumulating literature of comparative legal aid work. More important is the fact that from the pages of this volume we can learn why the English system of legal aid has been a failure.

The author writes with the penetrating insight of an English solicitor who has watched the administration of justice as it actually deals with poor persons' cases. He has spent some years in assembling the basic facts, has closely followed the work of the Parliamentary Committees that have endeavored to arrest a breakdown; and his analysis of the causes of the existing denial of justice to the poor in England is clear, logical, and relentless.

Mr. Gurney-Champion paints a vivid picture which is profoundly instructive to all of us who are interested in improving the position of the poor before the law in America. I shall try to make this review yield for us the fruit of the book's keen observations by interpreting the strength and weakness of the English system in terms of contrast to our own legal aid institutions in the United States.

Five coördinate elements are essential to secure legal justice to poor persons. First, the substantive law must be impartial, and the English law is impartial. Second, the administration of justice must be efficient, the courts must be well organized and the rules of procedure must be business-like; and in these respects the English administration of justice commands our admiration. Third, those indispensible ministers of justice, whether called lawyers, attorneys, barristers or solicitors, must be well-trained, must be organized for collective action and self-discipline, and must have a high ethical sense of professional responsibility to the public in general and to the poor in particular; and for their great achievements along these lines our English brethren merit the tribute of our sincere praise. Fourth, inasmuch as the state properly assesses a part of the expense of the courts on the litigants through a system of costs and fees, some special provision for impoverished suitors must be made through an adequate *in forma pauperis* system. The English Poor Persons Rules of the Supreme Court, although they have not been extended to the County Courts and are weakened by certain technical anomalies, are per se inherently sound if the special and limited purpose for which such rules exist is clearly understood. Certainly these provisions are far better than any comparable poor litigants' statutes in our states, as Professor Maguire has demonstrated in "Poverty and Civil Litigation".[1]

Fifth, there must be definite and responsible agencies through which the services of attorneys can be made available to all poor persons who are unable to secure such services by paying for them in the ordinary way. It is in this last field that the English have consistently failed. Here, for some reason that is hard to understand, they have persistently followed, albeit unconsciously, the incomplete legal aid system of such continental

[1] (1923) 36 HARV. L. REV. 361.

countries as France and Italy, have ignored the better plan that lies patent before them in Edinburgh, and have failed to take any advantage of America's ripe experience in developing our legal aid organizations which, with those of Norway and Sweden, set the standard for the world.

In legal aid work, the adage "because of a nail the shoe was lost, because of a shoe the horse was lost" and so on, is applicable. It is a chain in which every link must be sound. The five elements noted above will stand up under great pressure if united and integrated together; divided they fail. Mr. Gurney-Champion perceives the trouble perfectly clearly. The reason that "well over ten per cent of the population are denied justice solely on account of their poverty" [2] which "is the greatest blot upon our modern civilization" [3] is because "those in authority in England are again making the old historical, traditional mistake of not considering and solving the problem as a whole".[4]

In recent years it has been urged that the legal aid organizations in our American cities are indispensible adjuncts to the administration of justice. The validity of this claim is proved with unusual clearness and force by what has happened in England; indeed, from the point of view of the poor, it would be reasonable to assert that the legal aid offices are more important than the courts themselves. No one can appreciate in full the enormous service of our legal aid offices until he is confronted with a realization of what happens in their absence. Without them the problem is insoluble; and every effort to construct a plan that does not include them comes to grief because the practical result is to put the cart before the horse and to let the tail wag the dog. Before reading this book I should have deemed the foregoing statements to be extreme and unwarranted; but a summary of the situation in England will enable the reader to judge for himself.

The declaration in Magna Carta *"Nulli vendemus, nulli negabimus aut differemus, rectum aut justiciam"*, as re-enacted in subsequent statutes, is still the law of the land.[5] In trying to perform this obligation of the state the English have always thought in terms of *litigation.* They started with an *in forma pauperis* procedure during the reign of Henry VII[6] designed to enable poor people to get into the *courts,* and ever since they have merely elaborated and attempted extensions of this central idea of enabling the poor to assert their rights in court. The Constitution of the United States guaranties "the equal protection of the laws"; but very fortunately, and perhaps only by chance, the originators of the American legal aid system thought in terms of *cases* which needed the attention of lawyers in *law offices.*

In England there are "poor man's lawyers meetings" conducted by religious, philanthropic, and political bodies, and by a few of the provincial law societies.[7] Of these the best is the Mansfield House University Settlement which is as old as any American legal aid society. But while the American legal aid offices were steadily becoming real law offices, staffed by full-time attorneys with competent clerical assistants and with at least rudimentary library facilities, open to clients throughout the normal working day, the English poor man's lawyers meetings remained disorganized, staffed by solicitors and young barristers who volunteer to work in the evening after their own full day's work is done, without clerical or library

[2] p. 2.
[3] p. 3.
[4] p. 97.
[5] p. 164.
[6] p. 137.
[7] Chapter III gives a full description of their organization and work.

facilities, and in temporary offices unsuited for the dignified or efficient conduct of a law practice. All honor is due to these tired men who give of their time and strength, write out letters in their own hand, often advance costs out of their own pockets, and receive no reward whatsoever, not even the approbation of their fellows. "On the contrary, if a Poor Man's Lawyer were known as such he would lose caste or professional standing".[8] The difficulties are so great that this irregular system "only touches the fringe of the problem".[9]

The statistics of the American legal aid offices show that 90% of the cases of the poor need never engage the attention of the courts; 25% require accurate advice and nothing more; 65% are disposed of by negotiation or settlement or conciliation, or are discontinued because after investigation the claim appears legally unsound. Hence it is fair to say that of the legal justice needed by the poor a properly constituted legal aid office can itself perform ninety per cent, invoking the further aid of the courts in only ten per cent of the cases. In England, as the poor man's lawyers meetings have been entirely inadequate, the whole burden is thrown on the courts with results that are deplorable from every point of view.

Mr. Gurney-Champion says, "Legal advice is by far the most important requisite, . . . it is the key to the solution of the problem. The State and local authorities make no provisions for giving legal advice to the poor".[10] Theoretically, a poor man can ask a magistrate for his advice in open court but "practically the giving of legal advice in the police courts can be ignored as having no appreciable bearing on the problem".[11] Unless a poor man can get advice at a settlement there is no way for him to determine his legal rights except by applying for leave under the rules to start the complicated machinery of litigation.

The methods used by American legal aid attorneys in conducting cases that require more than advice are precisely those employed by all other attorneys in their own offices. Correspondence is had with the opposing party or his attorney. There are interviews and conferences. In most matters a settlement is reached after negotiation, or the differences are adjusted by conciliation, or some mutually satisfactory solution is worked out in whatever way best suits the circumstances of the particular case. Such work constitutes the bulk of all law practice and of American legal aid practice.

In England there is no provision for what Mr. Gurney-Champion calls "conciliation", which term he uses to include all that we mean by correspondence, negotiation, and adjustment, in fact, everything short of actual litigation. The Poor Man's Lawyers Meetings are impotent in this respect because they have no office facilities; even correspondence is difficult because there are no typists. One such meeting, conducted by a provincial law society, has a rule "the assistance given will, under ordinary circumstances be limited to advice and in *proper* cases to the writing of *one* letter".[12] Such a rule would kill legal aid work in America. In England, the result is that a poor person with a valid claim must litigate it, and the litigation must proceed to its bitter end. The administration of the Poor Persons Rules is in the hands of the Poor Persons Department; but this is "a clearing house without power to give advice or attempt conciliation"

---

[8] p. 17.
[9] p. 16.
[10] p. 14.
[11] p. 15.
[12] p. 16.

(*i.e.* negotiation).[13] To the poor person there is assigned a solicitor to conduct his case. Even at this stage negotiations might dispose of many matters but "under the Poor Persons Rules no poor person, nor any solicitor for him, may discontinue, settle, or compromise proceedings without the sanction of a court or judge."[14]

The result of such a system can best be conveyed by figures. Our legal aid offices in the United States receive 125,000 cases each year. They handle about 115,000 of these themselves through their advice and negotiation and carry only 10,000 to the courts. If the English system were in force here all of the 125,000 cases would go into the courts or receive no justice at all. No wonder the burden thrown on the English courts has disturbed the government and the bar and has caused the machinery to groan under its weight. "Properly applied, conciliation (*i.e.* negotiation) would enormously reduce the number of poor persons' cases and the expenses connected with giving legal aid to the poor. On the contrary, every hindrance that could possibly be invented to prevent conciliation seems to have been in favour with those in authority."[15]

From this English attitude of thinking exclusively in terms of court litigation and of making provision only for litigation there result a score of other difficulties which need not exist at all and which are of no moment whatsoever under our American legal aid practice. Within the limits of this review only the two major troubles can be referred to.

In the English system the most essential person is the conducting solicitor. The plan has broken down because, in spite of repeated appeals, enough solicitors cannot be secured. "In 1925, there are over 400 cases of poor persons who have been admitted to take proceedings under the rules, and whose cases have been favorably reported on by the reporting solicitors, but which it is impossible to bring before the courts, because there are no conducting solicitors willing to take these cases up."[16]

Nor can we blame the English solicitors because the state has really attempted to unload on them the expense of administering justice to the poor. Mr. Gurney-Champion refers again and again to the problem of the solicitors' "out-of-pocket expenses including reasonable office-running expenses" without which "no voluntary system, whether it is controlled by a department or by a law society, has the least chance of permanent success."[17] What is a fair allowance to solicitors without involving an element of profit has agitated Parliamentary and Law Society committees. In America this problem does not exist. The legal aid attorney is paid a salary by an organization (whether public or private) that also supplies the offices, pays the rent, and furnishes clerical assistance, postage, stationery, and whatever else is needed in the conduct of the work.

A second English problem is the poverty test. What is the sum of capital and/or income below which a man is legally a poor man and entitled to legal aid? Mr. Gurney-Champion recurs to this problem repeatedly for the sake of emphasis.[18] Of course, the only real test is a flexible one that takes into account all the circumstances. Furthermore, the ascertainment of whether the facts show the applicant to be a poor person within the law (a function of the reporting solicitor) is a special and time-consuming task in itself. The American legal aid organizations have never fixed a rigid rule defining who is a legal aid client and, after mature

[13] p. 39.
[14] pp. 85, 211.
[15] p. 85.
[16] p. 39; see also p. 193.
[17] p. 43.
[18] pp. 82 and 44.

deliberations in their annual conventions, have concluded that no rigid rule is possible or expedient.

Their investigation to determine the fact of poverty takes almost no time. Ninety-nine per cent of their applicants are poor beyond peradventure. As the case proceeds they learn all that is needed about the client, and should they ever be mistaken, the opposing party is only too glad to sound a warning. During the five years that I was counsel for the Boston Legal Aid Society some 15,000 cases were received by the organization; there was hardly a case that caused any difficulty; and I have no recollection of any instances in which prosperous persons deliberately endeavored to impose on us. To define and prove poverty according to fixed rules is hard and results in hardship. In practice the whole problem evaporates before the common sense of a properly-qualified legal aid attorney.

Mr. Gurney-Champion deals adequately and systematically with the position of the poor before the criminal law;[19] but, as he correctly points out, legal aid in criminal cases is in no substantial particular different from legal aid in civil cases—both are essential in any thorough-going plan—so that we need not stop for any special discussion concerning the poor man accused of crime.

The English government is fully aware of the failure of its system; and in 1925 on the report of Mr. Justice Lawrence's Committee, which has been adopted by the Council of the Law Society[20] it was decided to entrust the administration of poor persons' procedure to the Law Society in London. As Mr. Gurney-Champion points out this will insure honesty and efficiency in the highest degree; but as the root causes for the failure have not been touched, the Law Society is left in the position of trying to make bricks without straw.

We shall now see in England the plan of caring for the legal needs of the poor through the services of volunteer solicitors tried out under auspices as favorable as can be had. But unless radical changes are made, it is hard to see how the poor in England can be given as fine a type of service as is made possible by the American legal aid organizations where responsibility is definitely centralized, where a special technique for the efficient conduct of the work is continuously maintained and developed, and where competent attorneys devote all their time and their full strength in behalf of their deserving clients.

Out of the Law Society's experience there may emerge a plan for genuine legal aid offices. For a solution to the problem Mr. Gurney-Champion emphasizes the desirability of establishing such "bureaux"[21] under the control of the Law Society and the provincial law societies. Why England should hesitate to take this step is hard to understand. The admirable system of English courts and procedure plus the American system of organized legal aid work should be able to furnish a complete solution for the entire problem.

Until England does proceed along such lines it seems inevitable that the poor will continue to suffer legal injustice. Of this the gentlemen representing the several religious denominations in England say in their foreword "As Christians, we consider this position to be inexpressibly injurious, and inhuman; and being, moreover, contrary to the teaching of the Lord Jesus Christ." Mr. Gurney-Champion proposes that the government either redress the present situation or that it repeal Magna Carta by enacting a draft bill[22] which recites that the state finds it impossible for

[19] Chapters V and IX.
[20] p. 70.
[21] pp. 146, 150.
[22] Appendix I, p. 165.

financial reasons honorably to fulfill its obligation to the poor and which concludes "This Act may be cited as the Poor Persons (Honesty) Bill, 1925."

It is to be hoped, indeed there is every reason to believe, that *Justice and the Poor in England* will point the way and, by its revelation of the underlying causes, enable the English barristers and solicitors to erect a legal aid system worthy of the highest traditions of the English common law. And for their encouragement let us frankly admit that it is only within very recent years and after the causes had been made plain that the American bar bestirred itself to respond to Elihu Root's challenge in his foreword to *Justice and the Poor in the United States*—"It is time to set our own house in order."

REGINALD HEBER SMITH

Boston, Mass.

Cases on Equitable Relief Against Torts. By Zechariah Chafee, Jr. Cambridge. Published by the Editor. 1924. pp. 522.

This collection of materials is edited "primarily for students who have already mastered the main principles of Equity Jurisdiction and the Specific Performance of Contracts." "It is entirely practicable, however," in the editor's opinion, "to use this book for the introductory study of Equity if the more difficult cases be omitted."

The book is divided into six chapters and embraces some 500 pages. It is designed for a course of some thirty lectures; but more material is intentionally included than can be covered in such period. The volume will properly mesh with the Harvard Law School curriculum. It is in substitution for Ames' cases on equitable relief against torts and complementary with Pound's *Cases on Equitable Relief against Defamation and Injuries to Personality.* In structural arrangement and technique of presentation of materials there is a nominal departure from Ames. In types of cases presenting varied and more complex social, economic and even political considerations, there is a substantial addition to and modernization of Ames' materials. In the new volume also, there are almost no cases reported from the none-too-intelligible literature of legal antiquity. The presence of a decidedly liberal allowance of modern American materials is also notable.

The first chapter—some 150 pages—is devoted to "The Growth and Nature of the Jurisdiction over Particular Torts." Here is Chafee truly Ames. The purpose of the chapter is to point out, concerning the various torts, "that Chancery did not assume jurisdiction over them all simultaneously, and that each tort in the course of its development in Equity exhibited certain specific peculiarities of treatment." To this end reported cases and opinion-excerpts pass in review from earlier centuries down approximately to date. There are "Waste", "Trespass", "Disturbance of Easements", "Nuisance" and "Injuries to Business" to be so followed from their legal antiquity to modern days. The "jump" from case to case may be in terms of years or hundreds of years. Again, the "jump" may be from the case of a nobleman pursuing his tenant who may be about to prejudice his (the nobleman's) shade and shrubbery (1786), to a case concerning the privileges of the lessee of commercial premises to make the premises commercially fit (1878).

Assuming that it is important in a given case whether the rule of law is one way rather than another, and assuming that the utility of rules of law is determined by an evaluation of the social, economic and political conditions of the times and place where, truly this chapter of cases rolls up a voluminous hodgepodge of intricate problems concerning the *mores* of centuries long ago. If the author intends any such problem it seems almost

too great to attempt. The author affords no references to sources of materials which would be of assistance. But, grant a Utopian operation of the particular rule on a yesterday at the place where, what of it? A truism it is that "times change". Of course, it is also assumed by the reviewer that it is scarcely useful to become religious over these "ancient heads of equity" or their genealogy.

This is not necessarily intended as a criticism of the author's accomplishments in Chapter One. To the reviewer the material provides an excellent teaching tool of legal methodology. It challenges the instructor's methods of "solving" legal problems as well as affording opportunity to acquaint the student with the problem of methods and results. To lead the student to his own discovery that there is yet uncertainty and incompleteness in the data concerning the "origins" of legal phenomena—let us say Waste or Trespass, for example—lends aid to striking down any "budding" dogmatism or tendency to super-generalization and to inspire resort to scientific method and possibly, even, further scientific research into the particular problem at hand. An excursion into historical "origins" of legal institutions may well be useful to develop scientific methods in beginning lawyers. Again, as regards the "development" of let us say "Equitable Waste," Professor Chafee's materials may well be used to stimulate scientific methodology in law study. To find varying assignments of reasons for "Equitable Waste" in judges' opinions of the past 200 years may well be used to provoke inquiry into the stimuli for such behavior and the validity of the "theory." This will call for a choice of sources of data for such inquiry and for the end in view. And again, of what significance are these general statements (sometimes called "principles"), uttered by a judge in a case of a yesterday? To load rules of law with a social service for the era at hand is sufficiently instructive on whence the pertinent data. A course bringing out that legal evolution is not *in vacuo*, nor along metaphysical "immutable principles" is invaluable. Instruction in a scientific method that reaches out beyond the generalizations of judges into the present day world of affairs, is likewise invaluable. A "solution" of cases "on principle" yields to their pragmatic adjustment "on data." With these considerations in mind the reviewer sees excellence in the romp through the historical "origins" and "development" of the legal institutions treated.

Of the last section of the chapter—"Injuries to Business"—the reviewer has doubts, however. These cases impress the reviewer as being primarily problems in the substantive law of Trade Regulation. There seems to be little question of "equitable" relief. The author's materials and the arrangement thereof offer limited opportunity for any functional consideration of Trade Regulation problems.

In presenting what the reviewer presumes to call the second section of the author's book there is a departure, in form at least, from Ames. What experience induced the change is not stated. Ames is substituted for "by a different classification, in which each fundamental equitable problem, such as . . . 'the balance of convenience' . . . [is] presented as a unit, regardless of the kind of tort involved in the particular case which illustrates the problem." The cases are grouped by "general equitable principles."

"Bases of Equitable Relief" is made the heading of Chapter II with subdivisions concerning "The Establishment of the Tort" and "The Inadequacy of Other Remedies." Herein do we observe the courts, in the particular case, putting content into prevailing generalizations ("general principles") —such generalizations as have heretofore been variously stated—see *Hart v. Leonard*, page 150—and such more familiar formula as "inadequacy of legal remedy" and "irreparable injury." How far the author's "establishment" of "the tort" is intended to be in illustration of or a departure from

Langdell's teachings concerning the impotence of equity is not quite clear to the reviewer.

Material affording opportunity to examine various types of injunctional orders, the problem of ordering "affirmative acts" as distinguished from orders not to refrain from doing or not-doing, material illustrative of the "flexibility" of injunctional orders issued and outstanding and the possibilities of their ramifications are fully presented under "Relief in Equitable Proceedings Against Torts" in Chapter IV. Rules touching awards of damages in addition to or in substitution for specific relief are also covered in this chapter—these problems being carried over into the Code states where the distinctions between actions at law and suits in equity "are abolished," but where questions of choice of actions and jury trial still come to the top.

Cases putting meaning into such formula as "balancing convenience," "discretion," "laches" and "clean hands" are brought in under "Defenses to Specific Relief Although Other Remedies Are Inadequate" in the fourth chapter. An editorial note on the "Effect of Legislative Changes in the Law of Torts" paves the way for *Truax v. Corrigan* and the problems signallized by that case.

In the final chapters consideration is had of the power of the official of the political state to invoke equitable relief for "Protection of Public and Social Interests," *Georgia v. Tennessee Copper Co.* and *In re Debs* having received text space. A survey of some problems of contempt and imprisonment therefor constitutes the problems of the last chapter—"The Enforcement of Specific Relief."

The author is substantially indebted to Ames, as he acknowledges, for text materials and materials used in annotating the text cases. The author's original citations are extensive, however, and include a full citation of articles and notes from law school publications.

WESLEY A. STURGES

Yale University, School of Law.

Our Federal Republic. By Harry Pratt Judson. New York, The MacMillan Co., 1925. pp. xii, 277.

This is an interesting and timely book. It represents the frank but deliberately-formed views of the president emeritus of the University of Chicago upon some of the most fundamental problems in our national political life. It strongly argues that we have gone too far in giving to the federal government centralized control over matters that were formerly reserved to the states, that, in the interests of liberty, toleration, and a proper development of local responsibility, this tendency should be checked, and, if possible, reversed. One of the last paragraphs in the book reads: "There should be a Twentieth Amendment to the Federal Constitution. It should simply repeal all amendments following the Fourteenth." (p. 267). Nor are the views thus expressed merely the grumblings of a fearful or discontented conservative, as our younger school of radicals delights to picture them. President Judson's thesis is fairly presented and persuasively developed in an adequate setting of historical fact and political experience; and his conclusions, however debatable, cannot be dismissed to the satisfaction of any thoughtful mind by the use of a few of the large, vague adjectives, so common in the vocabulary of the *New Republic.*

The author first explains the basic idea of our government—which he happily calls "the federal equilibrium"—that certain powers shall be exercised by the national government for all, certain others by the state governments for their localities, and some are forbidden to the governments of both the nation and the states, being reserved to the people of the United States until such time (if ever) as, by constitutional amendment, their

exercise may be permitted to nation or states. The advantages of a federal government in giving free play to diversities of origin, culture, institutions, social and religious customs, modes of life, industries, and climate, and the wide-spread extension of the principle to municipal home rule within a state, are convincingly set forth; followed by a discussion of the federal bill of rights and of the function of the Supreme Court in maintaining it. The next two chapters deal in some detail with the operation of Amendments XV to XIX. The two suffrage amendments are disapproved, at least so far as concerns their application to voting for state offices, as violating the federal principle of home rule in matters chiefly of local concern, it being emphasized that the Fifteenth, particularly, could not have been adopted at any time subsequent to 1868. It is suggested with a good deal of force that the Seventeenth Amendment might better have *permitted* the states to choose senators by popular vote, instead of *requiring* it; and an entire chapter is devoted to a critical appraisal of the Eighteenth Amendment. Even the Income Tax Amendment is somewhat mildly disapproved, as facilitating congressional extravagance.

A chapter is devoted to the discussion and classification of the ninety-eight proposals for further amendment of the Constitution, introduced during the first Session of the 68th Congress, only one of which—the Child Labor Amendment—secured the necessary votes to be sent to the states. Although most of them will never travel far on this road, yet, as the author remarks: "They are of interest in showing what sort of measures relating to the organic law appeal to certain elements of our people." Chapters VII and VIII consider in an interesting way certain attacks upon the federal equilibrium by Civil War pension legislation and the more recently-sought federal control of state education by conditional subsidies. The final chapter briefly states the conclusion that further changes should be sparingly made, and that, in particular, there should be borne in mind the difference between those which can be readily enforced by private litigation in the courts, like the Thirteenth and section one of the Fourteenth Amendment, and those which require extensive administrative action depending for its success upon general local acquiescence, like the Eighteenth.

The permanent value of the book, however, lies, not so much in the validity of the author's specific judgments regarding the wisdom of the last five Amendments, as in the good sense of the general considerations which he suggests should control the decision of what matters are proper for a federal constitution in a country as large and diversified as the United States. These seem to the reviewer admirable, although, for instance, he would not agree that they were violated by the Sixteenth Amendment, however badly the Eighteenth might fare by such standards. It is unfortunate that in recent years there has been in this country so little effective discussion of the principles of government. In the mad scramble by all manner of special interests to secure legislation for their own ends, little but propaganda has received a hearing. More books like this one are needed, re-examining those theories and principles of government that experience has tested, and re-emphasizing those that have been found adequate. In this task President Judson's work will play a useful part.

University of Chicago, School of Law.

JAMES PARKER HALL

Mental Disorder and the Criminal Law. A Study in Medico-Sociological Jurisprudence. By S. Sheldon Glueck. Boston, Little, Brown & Co., 1925. pp. xxii, 693.

To begin with, this is by all odds the best book on the subject that has come to the reviewer's attention in many a day. Most books on this

subject confine themselves to trying to fit medical concepts and legal concepts together, without seeming to appreciate that they belong to different magnitudes and are therefore incommensurable. This fault is general in all such books, whether they be written by a doctor or a lawyer. The present work is a splendid exception. Whereas the book is written by a lawyer, he is a lawyer who has had excellent opportunities for an insight into the problem such as the physician gets; and this opportunity has come into his life early enough so that he has been able to utilize it with great advantage. The book therefore has, to my mind, the double advantage of being written by a lawyer who has a humanistic point of view. This humanistic point of view is not needed in order to get over suggestions in line with it to the physician. He is accustomed to it; but the lawyer is by profession and tradition almost without it and he will not be nearly so apt to pay attention to recommendations coming outside of his profession. Therefore I think it especially happy that such an excellent book should have been written by a lawyer, for I feel that for that reason it is much more likely to arrest the attention of the legal profession.

Just a word as to the thoroughness with which the subject is covered. The whole question of criminal procedure and mental disorder is discussed in great detail, not only in a general way, historically, but in connection with the most careful analysis of the outstanding historical cases which have shaped the development of criminal law and procedure, including a careful discussion of present practices and decisions and a detailed setting forth of the law in each state. In addition to this there are valuable and detailed chapters on the "tests", and a discussion of the disposition of accused persons not tried or defendants who are acquitted because of insanity or irresponsibility. The book should undoubtedly be the starting point of all discussions on the various questions it treats from this point on.

In general, as might be expected, because the author is a lawyer, his recommendations are conservative. He believes in proceeding by a slow, gradual and sure process of evolution and development rather than by advocating anything radical. He would, therefore, be willing to sacrifice ideals that are unattainable by any methods that he can devise for practical results that are attainable by moderate advances in various directions, particularly in the way of enlarging the concepts that are now in use rather than endeavoring to revamp the whole territory. Whichever method of procedure is advocated, the conservative or the radical, is probably a matter of temperament almost entirely; and there seems to be no way of telling when to advocate one and when the other—or what the chances of success for either may be. The reviewer is rather inclined to believe that we can never solve the question of responsibility, about which so many of the pages of this book are written. As I have set forth elsewhere, my belief is that the concept of responsibility is based upon the feeling attitude which develops towards the defendant. In other words, responsibility is a conclusion based upon a feeling attitude rather than upon an intellectual one. It is a rationalization of the jury's wishes. If they wish to punish, they believe the defendant responsible; if they wish not to punish and are sympathetic, they believe him irresponsible. This is precisely the reverse of the way in which the concept is usually thought of, and practically relegates it to the category of legal fictions. The fact that it is a fiction may or may not be significant. The things that we lived by yesterday are fictions today, and the things we live by today will be fictions tomorrow. Perhaps a more important question is whether as a fiction it has or has not survived its usefulness. At any rate, the whole idea of guilt or innocence, responsibility and punishment, belong to old theological ways of thinking. Society is not, or I might perhaps better say should not be, interested in responsibility but only in social assimilability. The simple

thing which I have always advocated is to do away with all these inquiries into responsibility, insanity and the like, and merely remove anti-social offenders from society and keep them as long as they remain anti-social. This, however, is a radical procedure and probably has no way of being brought about directly. That it is being brought about indirectly, however, would seem to be the case. In the matter of capital punishment, for example, juries will not convict and judges will not sentence. So why insist upon something which can not be enforced and which is rapidly ceasing to exist so that today to all intents and purposes it is only the helpless, poor, defective adolescents who are executed? Another sign that things are changing is the Juvenile Court. Here there are growing up, at least in some jurisdictions, methods of procedure which are diametrically and radically and in every way opposed to the old legal traditions. It would evidently be futile to make a frontal attack upon these traditions, and yet the Juvenile Court coming in from the flank unnoticed is building up a structure which, conceivably, ultimately may by a process of benevolent assimilation destroy all of the old traditions, which would be able to defend themselves successfully by any other method of attack.

It is time that society quit settling its affairs with the individual delinquent on the basis of vengeance; and the author of this book fully sees this aspect of the situation and even suggests that the criminal be no longer designated by that name but be called offender, having due regard for the value of new names as stimuli to new points of view. He believes, also, in the doctrine of partial responsibility, which I take it is a concession to the conservative method of procedure—getting what you can rather than attempting the impossible. Philosophically, of course, I would naturally be opposed to this idea because of what I think about the concept of responsibility, and very possibly the author may feel the same way and his suggestion be born of a practical regard for things as they are. He feels, at least, that the expert should not be called upon to answer questions of responsibility, and is quite alive to the utter absurdity of citing decisions judges made generations ago under social conditions that were absolutely different from the present-day conditions as guides for our conduct in this twentieth century.

The book needs to be read by every serious student of the criminal law and practice, be he either lawyer or physician; and whether he takes the more conservative view of attempting to make progress slowly and in a practical way, or the more radical method of a new evaluation of the whole situation, will, as I have suggested, probably depend upon his temperament. Certainly, social-mindedness is growing at a rapid rate; and no one can foretell what the immediate future will bring. Very possibly the problem of the radical today will be that of the conservative tomorrow, or at least the two programs will tend to merge and be less antagonistic.

WILLIAM A. WHITE

Washington, D. C.

The Branch Banking Question. By Charles Wallace Collins. New York, The Macmillan Co., 1926. pp. 182.

Unquestionably the livest question in American banking during the last five years has been with respect to the development of domestic branch banks. The question is particularly acute in the opening months of 1926 inasmuch as Congress is debating the question in the McFadden-Pepper Bill and the Supreme Court of California is deciding whether the existing device for restraining the development of branch banks in California is

legal and warrantable. It is, therefore, most opportune that a book on the branch bank question appear this spring.

According to the author the book is designed to bring together in readable form the various aspects of the question in the United States. It is not a comprehensive discussion of the theory and practice of commercial banking under the branch bank system as against the unit bank system. In fact the greatest weakness of the book is the small consideration given to the arguments for and against branch banking itself; the only real discussion of this fundamental problem is found in "Chapter I, Introduction," sixteen pages, and even here there is an evident effort to reduce the discussion to a bare summary of arguments and to refrain from taking a positive stand on the question.

The especial virtue of the book is that it assembles the leading facts—historical, legislative, administrative, and statistical—of branch banking in the United States, in such manner as will make the reader understand the problem of the California Banking Department, of the Federal Reserve Board, and of Congress, in dealing with the branch bank situation now before them. The author has drawn his information largely from resolutions and reports of the state and national banking associations; the hearings before state legislature and Congressional committees; the investigations made by the Federal Reserve Board and reported in the Federal Reserve Bulletin; the statutes of the States; the administrative provisions of the state superintendents of banks, of the Comptroller of the Currency, and of the Federal Reserve Board; and, finally, Congressional debates. No new information on the question is contributed by the author; he has simply assembled and carefully correlated the leading data from the sources named. This task has been rendered quite simple by the very paucity of data and the short period—since 1919—that the question has been prominent. Of the 176 pages of text in the book the last 46 pages are given over to appendices containing the opinions of the Attorneys General, the Regulations of the Comptroller of the Currency, the Regulations of the Federal Reserve Board, the provisions of the McFadden Bill, with its many changes during its legislative history. Quotations, often of considerable length, also appear frequently in the first 130 pages.

To the reviewer the following features of treatment of the subject seem worthy of special mention:

1) The author is at pains to differentiate between the problem of city-wide and state-wide branch banking, and seems inclined to agree with ex-Comptroller of the Currency Dawes that only the latter should be restrained by law. The futile efforts of the Comptroller and of the Federal Reserve Board to secure permission from Congress for the national banks to establish branches in cities where state banks were operating branches in competition, are given, as is also the action of Comptroller Crissinger in authorizing "additional offices" and of the First National Bank of St. Louis in founding branches and testing Missouri's right to stop it.

2) The character and extent of branch banking in the several states are carefully surveyed, the statutes analyzed, and the recent legislation on the subject given with reasons and effects. One is here impressed with the wide diversity of law and banking development, but through it all one notes the tendency to suppress or control branch banking and to foster independent unit banking, a policy presumably born of our traditional local independence coming down from frontier days.

3) The rapid rise of city-, county-, and state-wide banking in California, is shown to have precipitated the question both upon the California Banking Department and the State Legislature and upon the American Bankers Association, the Federal Reserve authorities, and the national Congress.

The question has reached such malignant form as to threaten with extinction the national bank system and therefore the Federal Reserve. The spread of branch banking in California is shown to be held in temporary abeyance by agreement between the State Superintendent of Banks and the California League of Independent Bankers, but this agreement is the subject of a mandamus suit now *in lite* before the Supreme Court. Friend and foe of branch banks have been debating the provisions of the McFadden bill which is a compromise on the question and is designed to protect the national banks and the Federal Reserve system against the state branch banks. The author covers the legislative history of this bill in detail, with the opinions of its leading supporters and opponents.

4) An examination is made of the policy of the Federal Reserve Board toward branch banks; the policy is shown to be shifting and unstable; the problem of defending and extending the Federal Reserve, of equalizing the plane of competition of national and state banks, and of allowing the state member banks to enjoy all their charter privileges, seems almost beyond solution. Undoubtedly the Board will welcome a positive statement of national policy as represented in the McFadden Bill, for the execution of the prescriptions of law is easier than the formulation and execution of a policy by Board regulations.

RAY B. WESTERFIELD

Yale University.