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REVIEWS

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REVIEWS

POPULATION—A PROBLEM FOR DEMOCRACY. By Gunnar Myrdal. Cambridge: Harvard University Press, 1940. Pp. xiii, 237. \$2.00.

THIS is a little book in volume, but a great one by any qualitative standard. Professor Myrdal, outstanding among contemporary Swedish economists, has handled clearly, vigorously and interestingly a problem knotty with social, political and economic complexities, delicate in its relation to accepted moral values, dangerous in its potentialities if improperly treated.

The population problem, for over a century, has suffered from the enthusiasm of extremists. The genius of Malthus was inadequate to foresee that he stood on the threshold of unparalleled expansion of production, and his demonstration that the growth of population was outstripping the resources of nature, made economics the "dismal science" of the early nineteenth century. When the expansion of production seemed destined to a perpetual progression, the assumed need for a cheap labor supply and the pruderies of the Victorian Age coincided happily to make Malthus anathema. In our own day, the enthusiasm of birth control advocates met the coincidence of prolonged and severe unemployment and neo-Malthusianism became prevailing popular doctrine in the democratic countries. At the same time, propaganda in totalitarian countries has shouted for the brutal extreme—a rapidly growing population to supply the armies of conquest.

The popular appeal of neo-Malthusianism is easily appreciated. If you have unemployment, an increase of population either through birth or immigration seems merely to have the effect of increasing the number of unemployed. On the level of the individual family, the economic effects of population increase are even more marked and immediate—with a static income, each additional child means so much less food and clothing for other members of the family, so much more crowding in the home. Of late, however, economists have come more and more to doubt the validity of these apparent truths of common-sense observation. Under the leadership of Alvin Hansen, they are now pointing out that a declining population growth means a slowing down of the economic system, reduced opportunities for investment, less new housing, fewer new schools, increasing disproportion between savings and investment, fewer and fewer opportunities for youth (because of a continuous increase in the proportion of older people in the population), and in the long run, increased unemployment.¹ As the dramatic decline in the rate of

1. See testimony of Hansen before the Temporary National Economic Committee, 9 *Hearings* 3495-3520, 3538-3559; HANSEN, *FULL RECOVERY OR STAGNATION* (1938); Hansen, *Extensive Expansion and Population Growth* (1940) 48 *J. POL. ECON.* 583; Hansen, *Economic Progress and Declining Population Growth* (1939) 29 *AM. ECON. REV.* 1; Spengler, *Population Trends and Economic Equilibrium in the United States* (1940) 48 *J. POL. ECON.* 153; REDDAWAY, *THE ECONOMICS OF A DECLINING POPULATION* (1939). Contrary views are expressed by King, *Are We Suffering from Economic Maturity?* (1939) 47 *J. POL. ECON.* 609; Reed, *Economists on Industrial Stagnation* (1940) 48 *J. POL. ECON.* 244; COMM. ON POPULATION PROBLEMS OF NAT. RESOURCES COMM., FEB-

population growth² becomes more widely known, there is little doubt that popular attention will turn to this newer population theory. Already the Townsend and "Ham-and-Egg" movements have made us aware of the economic and political effects of the equally dramatic change in the composition of our population, the decline in the proportion of children, the increase in the proportion of the aged (contraceptives at one end of the population scale, antiseptics at the other).³

A noteworthy consequence both of population decline (or the slowing down of population growth) and the changing composition of population is an increased drive towards government intervention in the economic sphere. State planning and investment control to decrease investment risks, state investment and state subsidization of purchasing power to compensate for the decline of investment become more and more necessary as the population decline continues. Increasing intervention to assure support for the aged is inevitable as the proportion of aged grows greater.

Professor Myrdal accepts these theories of the economic effects of declining population growth, although with somewhat greater hesitancy than some American economists. He goes further in examining the social effects of the decline and finds them undesirable. But he does not stop with a scholarly wringing of the hands. He boldly sets out a program for positive social action, a program for population growth consistent with a democratic society. Since it is not a program of population increase for a totalitarian war machine it begins, paradoxically enough, with a recommendation that birth control methods, instead of being prohibited, should be encouraged. "In a democratic society we cannot accept a way of things whereby the poor, ignorant, and inexperienced maintain the stock of the population." Consequently, undesirable births should be prevented and the birth rate should not be maintained by undesired births. Parenthood being thus made wholly voluntary, the next problem is to make it economically possible for those who desire children to have them. "The solution is: certain services free for all children and for all families in all economic classes, with no means test, planned as a rational cooperation between citizens in a democratic society on the principle of national solidarity, financed through the national budget, and, therefore, paid for according to the prevailing principles for the distribution of taxation according to capacity and ability." In short, a redistribution of total income resources in the population to the advantage of children.

LEMS OF A CHANGING POPULATION (1938) 8. One of the best of recent discussions takes a middle view: Sweezy, *Population Growth and Investment Opportunity* (1940) 55 Q. J. ECON. 64. See also THOMPSON & WHELPTON, *POPULATION TRENDS IN THE UNITED STATES* (1933) 320 *et seq.*, and NEWMAN, *THE BUILDING INDUSTRY AND BUSINESS CYCLES* (1935) c. 5.

2. The minimum estimates give us a peak population of 138,000,000 in 1955, followed by a decline of 10,000,000 during the next 25 years. If this is correct then we are rapidly approaching the Swedish situation. Other estimates are more hopeful, a median one gives us a peak of 153,000,000 in 1980. PROBLEMS OF A CHANGING POPULATION, *supra* note 1, at 22-25.

3. In 1870, people over 65 constituted 3% of the total population; today they constitute 6% of the population; in 1980 they will constitute between 11 and 17%. See DUBLIN & LOTKA, *LENGTH OF LIFE* (1936) 265.

It is obvious that this program means increased government spending. Those who would deplore this consequence must ask themselves what the alternative is. Myrdal is only one of many economists who has pointed out that "certainly, the trend in population will turn out to be one of the strongest underlying forces promoting government control and participation in business and production." The special interest of lawyers and political scientists must be directed at this point. If government intervention is an evil, we have nothing but a choice of evils: the downward population trend means more government intervention; the population trend can only be reversed by another form of such intervention. We have another alternative in this country, one which would in a very few years solve most of our population problems, which would give our aging society a new lease on life and would ease the social transitions of our changing population composition—increased immigration. Are we willing to take this step? Political obstacles seem tremendous, but the time is coming when our immigration policy will have to be reconsidered.

Professor Myrdal's study is based on the experience of Sweden. Our problems are somewhat different. Sweden has been faced with the danger of actual population decline. Myrdal despairs of population growth in his country; he seeks only population stability. We are in little danger as yet of a decline in total population. Our problems are decline in the rate of population growth, changing age composition, and regional population decline. Indeed, our changing population presents elements of hope which should be weighed against the fears of the economists.⁴ Nonetheless, they are serious problems, and, if Myrdal's analysis and solution are not applicable in toto, his scientific method, his realism and his moderation might well be applied by our own scholars to their solution. There is danger in the probability that, despite the contemporary interest of economists in the population problem, the current rearmament boom and a possible temporary rise in the birth rate will make us forget long term trends. The population problem is fundamental to all major issues of social and economic policy. It is better to study it now than to wait until the crisis in population is at hand.

A. H. FELLER †

4. "The slowing down of population growth in the United States will leave this nation in a peculiarly advantageous position, as to the relation of total population to total natural resources. The situation is one that opens great possibilities for further economic and social advances." *PROBLEMS OF A CHANGING POPULATION*, *supra* note 1, at 34. Note also that the proportion of persons in the productive age groups is rising constantly. Fifty years ago persons 20-64 were 40% of the total population; in 1930 they were over 55%; from 1950 through 1970 they will be between 61 and 63%. While such a decided increase in our working population raises numerous economic problems it cannot but be considered a net advantage to the national economy.

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JUVENILE DELINQUENTS GROWN UP. By Sheldon and Eleanor Glueck. New York: The Commonwealth Fund, 1940. Pp. viii, 330. \$2.50.

LIKE their exceptionally interesting previous works,¹ this current volume by the Gluecks is a competent demonstration of what can be learned under highly favorable research conditions about crime and delinquency through statistical manipulation of the varieties of data which will normally be available with respect to groups of offenders. It consists in a follow-up over a further ten-year period of the same group treated in 1934 in *One Thousand Juvenile Delinquents*. The initial study was of a group of boys of an average age of thirteen and a half years, who, during the years 1917-1922, in being brought before the Boston Juvenile Court, were routed through the Judge Baker Foundation Clinic for examination and case diagnosis. At least fifty-five per cent were not first offenders, having been previously before the same court. The clinical study thus furnished the Gluecks with data concerning the personal and social characteristics in the past personal history of each of the thousand. There were available the recommendations of the clinic in each case, dealing primarily with where the offender should live during the period of oversight—probation at home, with relatives, in a foster home, or on a farm; or in a correctional institution, a school for the feeble minded, or some other type of institution. In most of the cases suggestions were also made as to physical care, educational and vocational adjustments, recreational activities, and discipline. The Gluecks had also the record of dispositions actually made by the court, in some instances following along the lines of the clinic recommendations, and in others not. Finally, they had a record of the subsequent known delinquencies of each member of the group over a period of five years following the termination of the "treatment" carried out by the court and affiliated agencies—treatment being defined as the period of time during which a boy was subjected to the particular category of supervision which the clinic had recommended.

The present study follows the group up to an average age of twenty-nine. Its stated purpose is three-fold: to determine and describe conduct during this period, including conduct during subjection to "peno-correctional treatment" where this occurred; to probe into the reasons for such changes of conduct as have occurred; and to develop and test out techniques and procedures for prediction of behavior. The authors have made a statistical analysis which follows a breakdown of the group on bases of three criteria: reform at an earlier or later age; response to various forms of peno-correctional treatment; and commission of serious or minor offenses. The authors find a decreasing frequency in the commission of offenses and a decreasing seriousness of offenses among those who do not reform with the passage of time. Those who reformed earlier were found to have advantages in hereditary equipment, intelligence, and home discipline, and to have started their delinquency at a later age. These findings are explained by postulating the phenomenon of maturation. As here used, maturation includes both personality integration and the slowing down and deterioration of the human organ-

1. FIVE HUNDRED CRIMINAL CAREERS (1930); ONE THOUSAND JUVENILE DELINQUENTS (1934); LATER CRIMINAL CAREERS (1937).

ism. This interpretation derives its main support from two facts which the authors obtain from their data on the group: first, that there is a fairly steady and predictable course of delinquency regardless of the age at which it begins and the type of treatment to which the individual is subjected; and second, that with increasing age there is a decrease in the frequency and seriousness of crime.

The explanation of changes in behavior in terms of maturation raises several questions. Obviously no member of this group could have avoided growing older, and at exactly the same chronological rate as his fellows. Does it not follow that the statistical relationship between whatever changes in conduct might occur and increasing age was inevitable? Then, too, several classes of data are lacking which would seem to be directly relevant to the formulation of any concept to explain changes of behavior in this group. No personal-social information of the last fifteen years is presented. The only current facts given are those concerning the commission or non-commission of known delinquencies and crimes, and the success or failure as measured thereby of peno-correctional treatment for those individuals who were subjected to it. Information on economic status, family relationships, employment history, leisure time activities, and the like, was unavailable. The authors have, therefore, had to be content with very indirect evidence of the reasons for changes in conduct.

We are referred to a footnote² from their previous study of this group in which they say: "In a prior research of similar nature (S. and E. T. Glueck, *Five Hundred Criminal Careers* [1930]) it was demonstrated that success or failure as measured by post-treatment recidivism is so highly reflective of success or failure in such other major fields of activity as industrial life, the meeting of family obligations, use of leisure, etc., that for practical purposes success or failure in respect to criminality may be used as a satisfactory index of success or failure in all major respects. Hence, this present study is limited to an analysis of the post-treatment delinquency and criminality of the youths involved." In the study cited the coefficient indicating the relationship between post-parole status and the status as regards industry, economic responsibility, family relationships, use of leisure time, and habits, in combination, was calculated to be .62.³ Granting the correlation for the original group of five hundred, the assumption that it holds for the present group of one thousand depends on the similarity in make-up between the two groups. This is troublesome, for there seem to be demonstrable differences. If we compare them with respect to nativity of parents, education of parents, proportion of the group with normal intelligence, proportion with mental disease, and the age at which work was begun, the Gluecks' data show differences of ten per cent or over on each of these counts. Despite the similarities in the general trend of the data these are discrepancies which might be statistically important and which certainly cannot be ignored. The lack of current personal-social data is reflected in the study in various other ways. When comparisons are made in sub-groups and when prediction tables are set up, the items of differentiation are necessarily those derived

2. ONE THOUSAND JUVENILE DELINQUENTS (1934) 4, n. 3.

3. FIVE HUNDRED CRIMINAL CAREERS (1930) 223.

from the past personal history of fifteen years ago. There may be further comparisons on the basis of more current data which would have been more vital.

Valuation of such a study must of course take cognizance of limitations which are inherent in the kind of data available in this field. Such shortcomings as the book exhibits are largely explainable on that basis. But it is perhaps appropriate to pose a few basic questions (even though it would be utterly unreasonable to expect the authors to be able to answer them on the basis of existing data) lest the concreteness of the many propositions which they have so ably demonstrated obscure what has not been demonstrated. What, for example, does the group of one thousand represent? We know that it comprises all of those who were caught at what passes for delinquency and brought before the court in Boston over a stated period of time. We do not know whether the *known* delinquencies of the group represent *all* of the delinquencies of the group. Much more important, we do not know how these individuals, either singly or as a group, compare as to behavior, to say nothing of personal and social characteristics, with other individuals, other groups, and the general population. For all we know, they may be committing fewer delinquencies than the average for other groups who do not run afoul of the courts. Controls of this sort are lacking. The process of selection which resulted in these one thousand being segregated from the general population for special processing by the state is similarly undefined, and indeterminate from the data on which this study is based.

Any conclusions which may be drawn from this study about the effects of "treatment" rest upon similar uncertainties. The data tell us that some of these individuals were placed in a correctional institution, some in foster homes, some on probation at home, and so on. But we are not dealing with identical individuals placed in identical homes. Nor do we know what happened to any one of these persons, or what each may have experienced as a day to day matter, in the course of any of these "treatments." Under these circumstances, conclusions about response to treatment seem to be conclusions about a response to something which cannot be satisfactorily defined, which is variable, and the nature of which is largely unknown.

These are some of the major limitations inherent in the data itself. To point them out is easier than to devise ways of surmounting them. It is only fair to say that in this volume, as in their previous ones, the Gluecks exhibit a keen awareness of these difficulties. They deserve real appreciation for contributing the important collections of data which they have, and for extracting from them so much that is demonstrable, as well as so much that is provocative. This book will unquestionably be rated with the relatively few distinguished studies in American criminology.

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A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW. By John Henry Wigmore. Boston: Little, Brown and Company, 1940. 3d ed. 10 vols. \$100.00.

SOME years ago President Hutchins of Chicago taught the course on Evidence at the Yale Law School. That was before his mordant wit had learned to serve an attitude which is habitually reverential towards some things. But even then, by common report among his students, it was his dictum that "the sun of Evidence rises and sets in Wigmore." And we found it so, although mostly from that fragmentary use so characteristic of law students and practitioners which is probably more unjust to this great work than to any other law treatise. A fuller knowledge has brought to this reviewer only deeper respect.

The preeminence of the *Treatise on the Anglo-American System of Evidence in Trials at Common Law*, not only in its field but in all the literature of the law, was apparent from the first. Professor Beale's appraisal of the original edition¹ is now a matter of history. As early as 1912 Professor Gifford of Columbia was told "by one of the staff of a great law library in New York that the book was called for by practitioners 'more than all other works on Evidence put together.'"² The passage of 35 years has brought forth more than its fair share of legal writing but Dean Wigmore's name has never been dimmed by comparison. What challenge there is to pre-eminence has come as a claim to share an acknowledged honor. The present edition is a worthy sequel to its forerunners.

Many of the factors which have made this book great have been amply noticed elsewhere.³ In the law, at least, no work could attain first rank without considerable excellence in organization of material; in the faculty of logical analysis and reasoning; in clarity of exposition. But here there is much more. First of all there is an attitude of mind which forever examines the rules of Evidence—whether generalized into broad principles or broken down into minute directions—in the light of the way they serve ultimate human needs. It is a common enough thing for such an objective to be professed. But at the hands of legal authors, at any rate, two things are likely to happen to it. It may be propitiated by clichés. And it may be lost to sight in a maze of legalistic ratiocination. This has been especially true of treatises. Yet here is a treatise singularly marked by painstaking treatment of detail which does not share the common failing. Here is an author who knows with unrivalled intimacy every tree in the wood and yet has never for one moment lost sight of the forest. Throughout the original work ran a strain of the finest kind of reforming zeal, an example of the best ethical and moral tradition to be found in the law. Neither advancing years nor great technical learning has impaired this zeal or narrowed the broad outlook which has accompanied it. The author stands in rare contrast to a point

1. Beale, Book Review (1905) 18 HARV. L. REV. 478.

2. Gifford, Book Review (1924) 24 COL. L. REV. 440.

3. See, for example, Beale, Book Review (1905) 18 HARV. L. REV. 478; Chafee, Book Review (1924) 37 HARV. L. REV. 513; Hastings, Book Review (1924) 18 ILL. L. REV. 347; Wilson, *I Confess An Obligation* (1940) 26 CURN. L. Q. 101; G. F. James, *Contribution of Wigmore to the Law of Evidence* (1940) 8 U. OF CHI. L. REV. 78.

of view bred from narrower professional scholarship which he has so aptly described:

"For this particular question, the greater risk of danger, and the greater need of education, seems to be in the fallacy of the technical (as opposed to the popular) view, viz. the assumption that the jury-trial system of Evidence is the only safe system that can be tolerated, and therefore that it must be imposed equally on administrative tribunals. This assumption permeates the judicial opinions. It is attributable to the narrow experience of the trial lawyers who have become judges. The inveterate habit of mind cannot easily be altered when the judicial function comes to be exercised. It eulogizes reverently the mint, anise, and cummin of every detail of the system. It enshrines with sanctity each exception to an exception to an exception of a rule. It scans the findings to detect a slip in the practice, and when found it fervently dwells on the particular virtues of the violated rule. In short, it acts upon the assumption that no truth ever has been or ever can be discovered, in human controversy, except by the rigid employment of the jury-trial rules."⁴

The substantive excellence of the work is inextricably interwoven with the presentation of the substance. The framework of today's principles of proof and evidence is given against a rich historical background, and all is treated in a style clear, pungent, interesting. Throughout are to be found well-chosen excerpts from commentators, critics, and courts expounding rules and their reasons. That, of course, is not unusual except that the quality of choice is high. Rarer among authors, and more interesting, is the extensive use of transcripts of proceedings and narratives showing the actual operation of the law of Evidence, the relation of theory to reality. These take a wide range in point of source and of time, and have been kept well up to date in each edition. The net result is a tool of far more value than any other work on Evidence to the student or trial lawyer whose interest is confined to acquiring practical professional competence; although its use may require something more in the way of time and pains. Anyone whose interest transcends (though it may also include) the purely practical will find no better storehouse of all those things which have lent a cultural and professional flavor to the practice of the law: the tracing of institutions and ideas; revealing incidents from the lives of great men in the law; passages from its great scenes; examples of skillful advocacy and of the best professional conduct.

Thorough agreement with everything in a book is never required of a reviewer—indeed one might suppose the opposite requirement was sometimes imposed. With others, I find disappointing omissions,⁵ and sources for dis-

4. This passage, first appearing in the second edition (I:31), is to be found on page 37 of the first volume. The attitude depicted finds remarkable parallel in "The cold, not to say inhuman, treatment which the infant Code received from the New York judges." Winslow, J., in *McArthur v. Moffet*, 143 Wis. 564, 567, 128 N. W. 445 (1910). For an example see opinion of Selden, J., in *Reubens v. Joel*, 13 N. Y. 488 (1856).

5. Some of these are ably pointed out in Morgan, Book Review (1940) 20 B. U. L. Rev. 776.

agreement in the present work but frankly these seem so trivial in estimating a thing of this magnitude and value as to deserve no mention here.

After all, the sun of Evidence does pretty much "rise and set in Wigmore," in a way that can scarcely be said of any other subject or any other work. May not this point a moral to the teacher of Evidence? Perhaps we should do well to require the whole treatise to be read in assignments by the class (the question of library facilities would be serious but not everywhere insurmountable). This would supplant the need for any materials consisting largely of appellate court opinions. But materials could be collected consisting chiefly of transcripts of testimony in the trial courts. Class discussion could be directed specifically to the questions which these materials would raise. This would introduce into the curriculum something approaching a clinical technique for the study of law at a point where it would do most good, and the reading of Wigmore would make the course a vehicle for imparting an attitude which may be of far more value to the lawyers of the morrow than the myopia which a narrow technical competence so often fosters.

FLEMING JAMES, JR. †

THE MACHINERY OF JUSTICE IN ENGLAND. By R. M. Jackson. Cambridge: The University Press, 1940. Pp. 342. \$3.75.

THE author is a solicitor and a lecturer in law at Cambridge University, where he offers an introductory course on the courts and lawyers of England. His aim with this book is to write a description of the British law system, colored very little by recital of a glorious past or glee in the legal pageantry of today, but flavored by criticism and suggestions of reform. The result is a conscientious and methodical book, indeed, a brief encyclopedia of the ways and means of litigation in England. His comments, rather measured and always kept as a minor chord, incline to the tone currently prevailing in American law schools, with its antagonism to formalism, its leaning to social legislation, and its enthusiasm for administrative law. The result is a sturdy, sober book, full of British lamps to light American footsteps.

After a swift sketch of the history of the modern bench and bar, the author describes the mechanism for civil litigation. The "County Courts" handle minor causes, using about four hundred benches with sixty judges. Theirs is the real burden. Then the "High Court" at London, with its three divisions and thirty judges, conducts a small quantity of bigger business. Then come the review tribunals, chiefly the Court of Appeal with nine judges pretty constantly employed, and the House of Lords with about the same number more or less available. There is also a chapter on arbitrations as a resort for arriving at business settlements. On the criminal side the book outlines the magistrates' preliminary hearings for major crimes, their final determination of minor ones, and the authority over serious crimes given to the

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Assizes outside London, the Central Criminal Court in London and the Quarter Sessions, with a complex of appellate machinery above. Civil procedure, governed by court rules, and criminal procedure with its details of prosecution, defense, probation, sentence, and so on, get their turn at parade and criticism. Barristers, solicitors, judges, and the career and earnings of each, finance from the standpoint of the state and the litigant, aid to the poor, and the new regiment of administrative tribunals: all in turn pass in review.

The volume ends with a sketch of suggestions and facilities for reform. The author inclines to a new national agency, a Ministry of Justice, to relieve the Lord Chancellor, whose days are too full of politics. He looks to a reshuffling of the court system, leading to a series of new District Courts, which would be developed from the numerous but somewhat haphazard County Courts. He would minimize the traditional but expensive London tribunals we know as the High Court and House of Lords. As a solicitor he revives the old plaint against the monopoly and aristocratic position of the barristers, fortified in their quaint inns.

Every chapter casts some light on American problems, sometimes by likeness, sometimes by contrast. English justice is expensive, pretty flexible, and swift in the High Court. The judges are impartial and experienced, if sometimes bigoted; the barristers sharpened and resourceful. The solicitors (ten times as numerous as barristers) do most of the law work. The County Courts carry the heavy judicial load with too few professional judges. American justice is cheaper, more popular, shoddier, it would seem. In England, as with us, the veteran judges have been unsympathetic to social legislation and to the tribunals set up to enforce it. Where the system of popular elections influences our judges, not always healthily, party politics and social favoritism seem to trouble the British bench and bar. Criminal proceedings are rather favorably viewed up to the point of sentence. At that point England, like America, fumbles. Regulation of civil procedure by the courts themselves, which we have been so eagerly imitating in the United States, is described without much complaint, but the judges, it seems, are slow as reformers. Juries have almost disappeared in civil cases. Legal education is still too narrow. The age-long quest for cheap justice is still unended. The author enlists and parades what he can of statistics. Cases filed and tried, salaries, pensions, and court fees, earnings at the bar, solicitors' bills and the dues at the inns are all delicate topics but each engages some effort at precision.

There is no other book describing English or American legal machinery so competently as this. Judge Simeon Baldwin's *American Judiciary* tried a generation ago to describe our courts. The picture was involved and incomplete. Even today the American scene remains perhaps too heterogeneous for treatment when we contemplate its fifty jurisdictions and quite divergent styles of bench and bar. In England the pattern is simpler at least, and Mr. Jackson has done well what no one else has approached.

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