Missouri Law Review

Volume 5
Issue 2 *April 1940*

Article 7

1940

Book Reviews

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WOE UNTO YOU, LAWYERS! By Fred Rodell. New York: Reynal & Hitchcock, 1939. Pp. 274.

LOOK AT THE LAW. By Percival E. Jackson. New York: E. P. Dutton & Company, Inc., 1940. Pp. 377.

Both these books are attempts to mobilize non-lawyers around the unfurled banner of law reform. Mr. Rodell's "lusty, gusty" effort has already reaped a mighty crop of bristling reviews in the legal periodicals[1] and one brief, disdainful note commenting merely, "no stretch of the imagination could class this book as useful criticism."[2] One or two of the reviewers have tried to emulate Rodell's breezy, slick magazine, "I'm down to your level" style. The literary results have been dismal, reminiscent of some of the hot-house humor which brethren of the bar splurge onto the pages of West Publishing Company's quaint little "Docket." In general the reviews judge the book on the basis of flaws evident to a lawyer, not from the impressions it will make on the layman for whom it was intended.

Most leaders of the early 19th century English bar remained complacently aloof when Jeremy Bentham with his telling illustrations drove home to non-lawyers the rottenness of the English criminal law, the nonsensicalness of the law of evidence, the corruptness of equity procedure. Bentham's intricate pain and pleasure calculus, his tremendously detailed codes did not impress these laymen; his illustrations, his dramatization or the defects of the legal system did. Now both Mr. Rodell and Mr. Jackson illustrate and dramatize defects galore. The fact that there is no "system" to their illustrations, that they jump in their talk from criminal to constitutional, to mortgage law will bother the layman not at all. He (our layman) will come away from either book saying of the law, "It is a mess, isn't it?"

But so far as Mr. Rodell's book is concerned, I'm wondering whether the lay reader won't, after the convincing magic of the author's machine-gun barrage of words has worn off a bit, wonder what all the shooting was about. He will have an impression that Rodell recognizes a distinction between "The Law" with capital letters and just plain "law" with small letters. The first is all bad and should be done away with, but the second you have to have around to settle disputes and things. But just what is "The Law"? Well, let's see. He says that lawyers think of "The Law" as a "sort of omnipotent, omniscient presence hovering around like God over the affairs of men" (page 33), which "never

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1. (1940) 40 COL. L. REV. 352; (1940) 25 IOWA L. REV. 394; (1940) 25 WASH. L. Q. 296; Hays, Book Review (1940) 49 YALE L. J. 974.
2. (1939) 53 HARV. L. REV. 363.

admits to itself that there can be anything new under the sun" (page 23), and is "something beyond and above every statute that ever has been or could be passed" (page 25), so that not only common but also statutory and constitutional law "are merely obedient offspring of that great body of abstract principles which never changes and which nobody but a lawyer even pretends to understand" (page 33). Is it "The Law" or just "law" that my tenant must give thirty days' notice before moving? How about my right to name my own executor in my will, or for that matter, my right to make a will? Is that a part of "The Law," which this fellow wants abolished? And title to my home; is that protected by the small or the big law? What does this fellow mean—"certainty and consistency, or any close approximation to them, is utterly impossible in the supervision of men's affairs"? Does he mean to suggest that I'm to jump on the band wagon and holler myself hoarse for a shift away from what we've got now to a system under which a lot of politicians in the legislature fix my rights by statutes which they can change any time they want to and a flock of smart-aleck "experts solve on their own subjective standards of justice certain factual types of problems" (page 256) not precisely covered by the statutes?

I think Mr. Rodell could probably answer these questions to the satisfaction of many laymen, and even a few lawyers, but he doesn't do it in this book. He's always saying, "but there's no need to pile up illustrations" when that's exactly what was needed—nice homely illustrations about just how his lay reader is being duped by legal lingo and the lawyers in his everyday affairs—not high and mighty talk about due process of law, about the Clayton Act, the Guffey Coal Act, or even about Ohio's tax on Max's trust certificates. His book will make an impression, yes, but not nearly as great an impression as he could have made had he clinched his distinction between "The Law" and "law" by coming down to the layman's level of experience. Too many people will be amused by the book but not moved by it. And one has a right to expect more than mere amusement about so serious a matter as the pernicious growth of legalistic abstractions and conceptionalistic thinking which balloon lawyers away from the real, the raw facts of life.

If Mr. Jackson's book had been available when "Woe unto You, Lawyers!" was in preparation, Mr. Rodell would have had a rich arsenal of illustrations upon which to draw to wad more powder down into some of his charges. If anything, Mr. Jackson's book errs in the direction of too much illustrative material. He takes the typical layman's criticisms of the law—there is too much law, it is uncertain, rigid, technical, hypocritical, slow, and expensive—and says of them that they are not discriminating, analytical and rational. He proceeds then, devoting a chapter to each condemnation, to fill up the layman's hollow suspicions with hard, factual content, and to set the layman's criticisms off in broader, more intelligent perspective. At the end of each of these chapters Mr. Jackson makes specific suggestions for reform. To cut down on the quantity of law, hold less frequent meetings of legislatures; introduce bills one year, discuss them the next; revise statutes periodically; provide that statutes will be out-

lawed after a certain time unless repassed; standardize the more important rules of procedure for all administrative agencies; have more *per curiam*, and shorter opinions. There are a variety of other suggestions to meet the other typical criticisms of our law. Most important is his oft-repeated insistence that the personnel, character and manner of selection of our judiciary must be improved. "A lay-man with a business man's point of view" (page 220) should be appointed as administrative head of the larger courts so as to achieve more adequate supervision of the clerical and administrative personnel of our judicial system and generally to work for better administration with respect to the business before our courts. His chapter, "The Law is Hypocritical" is his best. After demonstrating with a horde of specific instances how in actual operation our legal system produces hypocritical results, Mr. Jackson pointedly suggests that after all law merely mirrors human hypocrisies resulting from shifting and conflicting standards of morality and our attempts to legislate down strong biological and racial impulses.

After discussing remedies at the end of each of these specific chapters, Mr. Jackson concludes his book with three chapters dealing generally with remedies and entitled, "The Importance of it," "How to go about it", and "What to do about it." He insists that the importance of it lies in this that the flaws in our legal system constitute a very real threat to our democratic order. He suggests that the layman will have to go about it on his own initiative, being careful not to become entangled in legalistic arguments with lawyers. Rather the layman should search out and make use of the talents of liberal and social-minded lawyers. Although the three concluding chapters seem to show that Mr. Jackson had read Mr. Rodell's book[3] and has made some use of it, his proposals for reform are more specific and far less sweeping than Rodell's. He would not substitute expert administrators for judges, because "administrative bodies more readily prove corrupt, faithless and inefficient than do our Courts" (page 369). Instead of liquidating the lawyers and the judges, Jackson would restrict fees which lawyers may charge clients, enhance standards of legal and scholastic training for lawyers, require candidates for admission to the Bar to pass character tests, integrate and license the bar, treat it as an arm of the state, and hope that somehow these reforms will cause the lawyer actually to show a higher standard of business morality than his business man client.

Some of the reform suggestions made by Mr. Jackson are not too well thought out, and others are not explained in sufficient detail to make clear to laymen just what Mr. Jackson is talking about. Nevertheless, the book is exceedingly suggestive and I hope that heavy gobs of illustrative data contained in the

3. Jackson, like Rodell, compares lawyers to priests of old (page 353); talks of the "fetishes and fallacies" that have served to make law mysterious to laymen (page 354); warns against the wiles of lawyers' language (page 354); blames the lawyers for claiming that law is a science and is synonymous with justice in an ethical sense when actually law "is nothing but the fleeting and momentary breath of the seething, charging mass of humanity underneath." (page 355.) My hunch is that some of this may have been inspired by Rodell.

earlier chapters will not choke off the interest of the layman reader before he gets to those three final chapters.

It is unfortunate that Mr. Rodell and Mr. Jackson could not have worked together in the production of a single book. With Mr. Rodell's vivid style, and Mr. Jackson's sincerity and balance, an epoch-making volume might have resulted. Even so, we lawyers had best not lose sight of the fact that these two books are symptomatic of some pretty virile diseases in the law. Our complacency, born of familiar and daily contact with the diseased organism, needs the rude shock which each of these books gives. The layman needs the rational approach which Mr. Jackson's book presents. We do not have a Bentham in our midst, but we do have here two books which should not be lightly poo-pooed and cast aside by lawyers, as they will not be by laymen.

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THE BENCH AND BAR OF OTHER LANDS. By William L. Burdick. Brooklyn: Metropolitan Law Book Company, 1939. Pp. xii, 652.

This work is not merely a world tour of the courts of the important nations of the globe but also a comprehensive presentation of modern legal institutions. Combining, as it does, historical aspects with expositions of the present systems and personal experiences of the author in just the right proportions, there is at last offered a serious and readable comparative treatment of the bench and bar.

More than a third of the book is taken up with the English institutions. Starting with scenes in old Westminster Hall, we see the various judicial bodies emerging directly or indirectly from the *curia regis* and developing into their present form with most of the important matters now governed by statute but with the nomenclature and atmosphere still controlled by tradition. The author takes us into the various courts, functioning with enviable dignity and efficiency. The customary growth of the legal profession is portrayed, together with the division thereof into the barrister and solicitor groups. In this regard the English system is not so enviable and the American reader will probably prefer our unitary bar and our method of legal education.

In France we see that Anglo-American is not the only procedural system, nor necessarily the best. For example, French criminal trials seem both efficient and fair, though there is no privilege of cross-examination and prosecution is by the inquisitorial method. We further see a whole separate system of administrative courts passing on all matters connected with government. The French go the English one better, for their legal profession—broadly considered—consists of three branches, advocates, avoues and notaries. The author's classical learning is displayed—albeit unostentatiously—in connection with the history of the Italian courts. The modern system, in general quite similar to that of France, is found touched somewhat by the influence of fascism. While in the main throughout the book Dr. Burdick explains the various institutions and practices without

expression of approval or disapproval, he indicates plainly his opinion that the European totalitarian policies have adversely affected the administration of justice, particularly in Germany and Russia. There is an illuminating discussion of the confessions of political prisoners in Russia. However, the author finds much to be admired in the law administration of Japan and further that the Chinese system has been vastly improved in the territory under Japanese domination.

Perhaps the book's greatest contribution is the description of the judicial systems of Egypt, Palestine and India. While each of these has a somewhat different set of particular problems, they have the common broad problem of devising a legal system appropriate for several important groups of diverse nationalities, races and religions. The reader cannot help but admire the practical solutions which have been devised through means and concepts foreign to Anglo-American jurisprudence.

The tone of the book inspires confidence, yet an ordinary American reviewer may hesitate somewhat before he puts a critical estimate upon it. Perhaps he knows something of the English bench and bar, a little of the French and German, and practically nothing of the others. His judgment must be based very largely upon the portions of the subject matter with which he has some prior acquaintance. Tested in this way the book comes through with flying colors. One slip appears in the statement that the English Probate, Divorce and Admiralty Division has jurisdiction over the administration of decedents' estates.[1] One may wish that there had been a brief treatment of the bench and bar of our immediate neighbors on the North and the South. There is significance in the fact that, while Canada uses the English designations of barrister and solicitor, every lawyer is both and the profession is a unitary one as in the United States. Modestly the author omits an index which would be useful to scholars, though the detailed table of contents will probably suffice for most purposes.

However, these minor observations are not even fair comment upon the worth of the book. It is an interesting, important and unique work. While Dr. Burdick is unusually able because of his thorough scholarship to produce a heavily documented opus, citing chapter and verse, with all the other devices of the law-writers' craft, he has produced a pleasanter and a more useful book. It will be read and enjoyed, and its readers will be broader, and hence better, lawyers and citizens. Altogether it marks the climax—though we hope not the end—of a distinguished career as a scholar.

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1. Page 67. This Division has no power over succession except to grant letters, probate wills and to some extent to construe them. Judicature Act (1925) §§ 56b, 58 (4); Williams on Executors (12th ed.) p. 183. For more than two centuries the actual administration of estates has been conducted in Chancery. See Langdell, A Brief Survey of Equity Jurisdiction, p. 154 *et seq.*