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### Book Review. Howard, P., Criminal Justice in England

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devices. Perhaps this omission will subject the editor to considerable adverse criticism. Although most of the omitted material is touched upon in footnotes, the treatment as compared with that in Costigan, where 200 pages are devoted to it, or in Scott, where almost as much space is required, would be considered wholly inadequate.

However, much can be said on both sides. Each type of book has the same end in view—to establish the elements that are essential in the makeup of a trust. Having those elements in mind, it would seem that the mere multiplication of cases showing that in order to have a trust one must have those elements, may be interesting as comparisons, but not essential to a working knowledge of trust law.

To the writer it seems a strong argument in favor of Carey's method of approach is that it is practical and dealing with active social forces is intensely interesting. It will have a tendency to encourage the student to think for himself and should make an excellent teaching instrument.

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CRIMINAL JUSTICE IN ENGLAND. By Pendleton Howard. New York: The Macmillan Co. 1931. Pp. xv. 436.

Professor Howard has performed his allotted task of describing English criminal procedure with signal ability. Supported by funds furnished by the Council for Research in the Social Sciences of Columbia University, he spent a year in England observing the courts, examining the records and holding conferences with officials. The result is this book, which amply justified his mission.

It should be stated at the outset that the book is mainly a description of the administration of the criminal law, more particularly with reference to the initiation of prosecutions. True enough, in spots the treatise takes on a problematic aspect, especially with reference to the use and value of the jury. Rather frequent comparisons are made with the analogous procedure in the United States so that valuable inferences may be drawn. By and large, however, the book is a detailed description of the English system. The book suffers accordingly in readability. It is no evening's entertainment for the tired practitioner.

None the less, when that has been said, the only existing debit against this book has been registered. Indeed, this manner of treatment was dictated by the type of the problem undertaken, and all else is to its credit. The job was one which required painstaking scholarship, and the profession is to be congratulated upon having so competent a scholar as Professor Howard perform the work.

His book consists of seven chapters which logically divide the subject matter. These divisions are—a general introduction, the movement for public prosecution in England, the Director of Public Prosecutions, the police and the management of prosecutions, the criminal courts of England, summary jurisdiction and trial upon indictment, and some observations and conclusions upon the English system.

In the management of prosecutions lies, perhaps, the most fundamental difference between the English and American procedures.

Whereas the United States has a definite official, the district or county attorney, to represent the state, the English have no such simple, centralized organization. A prosecution may be instituted and carried on by a private individual (not only for a wrong done him but he may even "prosecute for a crime perpetrated upon his neighbor,") who hires his own attorney and proceeds as in a civil suit, in short, a modern projection of the blood feud. True, the cooperation of the police is secured and costs may be recovered from the state. As a practical matter, only relatively few prosecutions are conducted entirely by private individuals. The police institute and manage most cases sometimes employing their own counsel, and in any event directing the prosecution generally through particularly designated attorneys and others whose services are available. Finally the Director of Public Prosecutions has the duty to carry on the most serious cases, and the right to intervene in any case where the public interest requires his services. Various other officials and agencies institute occasional prosecutions, e.g., the Post Office Departments, the Attorney General, etc. It will be noted that this is a complex, and apparently unrelated system. The secret of its success judged at least from the criterion of public approval, is attributed to the cooperation of intelligent public officials, a factor lost sight of by many whose concern is entirely with the machinery of administration.

From a traditional practice of private prosecution, the movement for public prosecution advanced with great difficulty toward final success. The result is that there now exists a large body of officials who are really public representatives. They have not been amalgamated under any unified system, but in actual practice they have displaced the alleged system of purely private prosecutions. The Director of Public Prosecutions, and the attorneys who are habitually retained by him, the police and their counsel, the barrister—clerks of the courts, and the judiciary form the component parts of the organization.

One of the most striking facts developed is the system of the lay justices—25,000 of them, laymen who hear thousands of cases annually, many of them very serious ones, without any compensation, although they are assisted by a clerk who is usually a member of the bar. This system of lay justices is most significant from the point of view of explaining the expeditious informal procedure, the efficiency of the scheme purely as a fact-finding process, and finally from the viewpoint of securing active cooperation in the very heart of governmental activity. It is a factor which should interest those who are anxious to enlist public support in law enforcement.

Another very important factor is the increasing substitution of summary trial of indictable offences for jury trial. The trend is similar to that in this country which received impetus here from the Supreme Court decision in *Patton v. United States*, 281 U. S. 276, 50 Sup. Ct. 273, 74 L. Ed. 854 (1930), holding that a defendant can waive the jury in a felony case. This development in England has not taken place without criticism, chiefly because serious crimes have been reduced in the indictment to relatively minor ones in order to come within summary

jurisdiction. Curiously enough, the criticism levelled at the police and judges regarding such procedure is tantamount to the much publicized charges of "bargaining" and "waiver of felony" in this country. The author calls attention to charges of public corruption, and understandings between police and accused regarding pleas of guilty to charges reduced to those within summary jurisdiction. No doubt these human short-comings are not confined to any one people.

One draws the general conclusion from this book that the English system of criminal law administration is as illogical as can be expected. Indeed the English seem to take pride in this. "We don't pretend to be logical over here" said an official. "We simply use common sense, try to get along with our friends in the other departments and somehow get the job done."

All of this sounds very simple but the success of English administration lies much deeper. It may be ascribed on the one hand to the fundamental characteristics of the people, and on the other to the excellent personnel. This applies particularly to the judges who in a sense, are the key to the entire problem. They have come up from the ranks of the barristers, where they have gained vast experience, and advanced by their own merits. They are secure in their positions and accordingly without political obligations. They hold the respect of juries, counsel and public. Here again we may take stock and contribute to an equally desirable end.

Finally, the reviewer is impelled to quote a passage describing the trial proceedings:

"The conduct of English trials—both those taking place in courts of summary jurisdiction and before juries—is distinguished by order, dignity, urbanity and dispatch. Professional standards of conduct are on a higher plane than in the United States. There is very little, if any, attempt on the part of either side to get improper testimony before the jury by suggesting it in the form of questions, virtually no attempts to conceal relevant evidence, no dilatory tactics, no bellowing at witnesses, no derogatory references to the accused, no judicial scolding, very little wrangling among counsel and relatively few objections to testimony. Speeches to the jury are confined to the issues raised by the evidence. The judge takes an active part in the proceedings, frequently comments on the evidence, and attempts in his summing up to reduce the case to one or more simple issues of fact, centering the attention of the jury upon the essential portions of the evidence that bear upon these issues." (Pp. 403-404).

We should take this and other suggestions made in the book for what they are worth. We cannot transplant foreign methods into our own procedure. But we should attempt, more frequently than we do, an evaluation of foreign institutions and gather what profit we can from the process. To this end Professor Howard has made a most notable contribution.

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