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The American Judiciary

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THE AMERICAN JUDICIARY*

The two books which are the subjects of this review possess little in common save that each owes its existence to a professor or to professors of law, and that each is concerned with the courts. Professor Callender's book is designed to introduce the layman and the law student to the work of the judge, the jury, and the attorney. It is not the culmination of a research project; practicing lawyers will find little in the volume with which they are not familiar. Professors Frankfurter and Landis, on the other hand, have produced a very compact bit of historical research of the type regularly attempted but less frequently achieved by the candidate for the Ph. D. degree.

Professor Callender attempts to do little more than give a clear description of the organization of American courts and explain in simple language the nature of the more common judicial processes. After discussing briefly the relation of attorney and client, he devotes three chapters to the organization and jurisdiction of the state and federal judiciaries. Pleadings and forms of action next receive attention, and then the writer turns to the trial itself tracing the course of litigation, civil and criminal, from its initiation to its conclusion. This account, running through several chapters, gives due attention to the various courts of specialized jurisdiction which have been created, and calls attention at various points in the narrative to the possibilities, probabilities, and advantages of settlement out of court. In keeping with the latter practice is an entire chapter on commercial arbitration. The concluding chapter is entitled "The Problem of Improving Legal Procedure." The value of the book as a descriptive narrative is greatly enhanced by the addition of an appendix of 40 pages naming and briefly describing the

* *American Courts; Their Organization and Procedure*, by Clarence N. Callender. viii, 284 pp. McGraw-Hill, New York, 1927. \$3.00.

The Business of the Supreme Court. A Study in the Federal Judicial System, by Felix Frankfurter and James M. Landis. x, 349 pp. Macmillan, New York, 1927, \$5.00.

jurisdiction of the various courts in each of the 48 states and the District of Columbia. The nature of various writs, pleas, orders, etc., is made particularly clear by printing in full some 15 of these forms at various points in the text.

The author advances few opinions of his own except in the chapter on the improvement of legal procedure and even there he is more interested in probing for shortcomings than in proposing remedies. The few suggestions which he does venture are conservative enough, going little beyond recommending the unification of state courts, the institution of judicial councils, and the vesting of increased rule making power in the judges. The book will no doubt achieve all that the author expected of it. Mr. Callender has kept well in mind the limited legal vocabulary of his readers and has recognized throughout the necessity of careful explanation of the most familiar judicial processes.

In the preface to the volume on *The Business of the Supreme Court*, Professors Frankfurter and Landis state that: "Most of the problems of modern society, whether of industry, agriculture, or finance, of racial interactions or the eternal conflict between liberty and authority, are sooner or later legal problems for solution by our courts and, ultimately, by the Supreme Court of the United States." In view of the tremendous political and economic as well as social significance of a United States supreme court decision, it can hardly be denied that the American people need to be deeply concerned with the processes by which, and the conditions under which, such a decision is formulated and announced. The forces or conditions which must of necessity materially affect the nature of a supreme court decision are no doubt myriad, diverse, and elusive. Some of them are doubtless external; others are determined by the amount and character of the work with which the court is occupied. The title of this book may suggest that the authors are concerned with every item of the "business" of the supreme tribunal, which helps to explain the quality of a decision. If so, the title is misleading. There is little effort to describe, classify, or analyze the types of problem which the nine judges face, or to examine the kinds of legislation which they are called upon to review. The authors have confined themselves to the task of narrating in minutest detail those features of supreme court jurisdiction and practice which determine the amount of time the judges are able to give to deliberation. Changing rules of the court respecting the amount of time to be allowed for oral argument are consequently of significance to the authors. Of far greater consequence is the changing jurisdiction of the tribunal. The relief of the justices from circuit duties, the creation of intermediate appellate courts with final authority, the diminishing of the number of cases appealable to the supreme court on writ of error, all are within the scope of this study.

The statutes dealing with supreme court jurisdictions are relatively few in number and could have been set down in a few pages if the authors had been content merely to describe the

jurisdiction of the court. They have undertaken, however, to note every significant step in the long journey from the judiciary act of 1789 to the adoption of the judges' bill in 1925. Every serious proposal to alter the jurisdiction of the body is noted, and the support and opposition to the proposal is carefully examined. The debates in congress have been repeatedly dissected and cautiously reassembled. Footnotes, citing sources and containing supplementary material, furnish fully one-half the bulk of the volume. The most meticulous historian will not accuse these lawyer authors of failure to exhaust the materials upon which they relied. Anyone who wishes to know what was the extent or nature of the jurisdiction of the federal supreme court at any time, and the laborious steps by which legislation affecting that situation was achieved, will find his question amply answered in this book.

Whether or not other factors in the "business" of the supreme court ought to have been included in this study may be open to question. It will hardly be denied, however, that the authors have done a valuable pioneering service in offering even this partial explanation of the achievements of our highest tribunal. Of scarcely less importance is the light which is thrown on the legislative process. Perhaps nowhere else in our literature is the history of a legislative proposal traced as clearly as in the account of the eighty year struggle to induce congress to relieve the justices of the supreme court of their circuit riding duties.

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