

Tribunes of the People (Book Review)

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those who were charged with that work sought to declare rules of law as though they existed as absolute truths to which judges must yield.

It is, in fact, the opinion of this reviewer that we would do well to turn away in classroom work from dogmatic statement and, instead, carry on a study of the various law subjects in their interrelation with others, proceeding by means of a comparative study of decision law enlarged by variant views to be found in learned treatises.

The richest results that will come to the law student are a proper perspective of just such an interrelation and a realization that the same uncertainty which possesses him as a student, confronts the practicing lawyer in a substantial part of his litigated causes: The courts may choose one of two solutions, and whether it is to be the one or the other, will not be known until a court of last resort has spoken, and then oftentimes by divided vote.

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TRIBUNES OF THE PEOPLE. By Raymond Moley. New Haven: Yale University Press, 1932, pp. vii, 272. \$2.50.

An expert and pioneer in the scientific study of administration of criminal justice has given us in this volume a realistic and critical analysis of the New York Magistrates' Courts. To most persons, the author is better known as the one-time head of President Roosevelt's "Brain Trust," and as editor of the new weekly, *Today*.

The sub-title of the volume is, "The Past and Future of the New York Magistrates' Courts." It is the product primarily of a study of the Magistrates' Courts undertaken in 1930 at the request of Judge Samuel Seabury, who was then engaged in an investigation of these courts.

It is a volume well worth reading—it is indispensable to students of municipal administration and administration of criminal justice. One thing becomes clear as crystal: the level of administration of justice in the Magistrates' Courts is no higher—and no lower—than the level of the administration of our municipal affairs. If we would purify our municipal courts, we must purify our municipal politics. Judge Seabury and his expert, Professor Raymond Moley, have set the goal. They are not always in accord as to the direction to be followed.

The author discusses the appointment by Governor Hughes in 1908 of the Page Commission to study conditions in the inferior criminal courts, the Commission Report of 1910, and the Act Relating to the Inferior Criminal Courts of the City of New York, passed several months later. This act was the most important contribution of the Page Commission. But it proved not to have gone to the roots of the problem. Judge Seabury appraised its work as follows:

"The reason why we are no better off today under the Inferior Criminal Courts Act than we were prior to its enactment is that the

Inferior Criminal Courts Act left unimpaired and free to flourish the basic vice in the Magistrates' Courts, *i. e.*, their administration as a part of the political spoils system. It left the magistrates to be appointed by a political agency, the Mayor, upon the recommendation of the district leaders within his political party—and these men, as we know, have regarded the places to be filled as plums to be distributed as rewards for services rendered by faithful party workers. The courts are directed by these magistrates in co-operation with the court clerks, who are not civil service employees and who are appointed without the slightest regard to fitness or qualification, but solely through political agencies and because of political influences. The assistant clerks and attendants, though nominally taken from the civil service list, are still, in almost all instances, faithful party workers who, despite civil service provisions, have secured their places through political influence as a recompense for services performed for the party. The insidious auspices under which the magistrates, the clerks, the assistant clerks and the attendants are appointed are bad enough; the conditions under which they retain their appointments are infinitely worse, because they involve the subserviency in office to district leaders and other politicians."¹

The succeeding chapters of this volume, "The Seabury Investigation," "Organization, Jurisdiction and Housing" of the Magistrates' Courts, "The Man to See" (the court clerk),² "Bail,"³ "The Women's Court," "Probation,"⁴ "Defense and Prosecution," and "The Third Degree," furnish the evidence to

¹ P. 35, quoted from Final Report of Samuel Seabury, Referee to the Supreme Court, Appellate Division—First Judicial Department, In the Matter of the Investigation of the Magistrates' Courts in the First Judicial Department and the Magistrates Thereof, and of Attorneys-at-Law Practicing in Said Courts, pp. 14, 15.

² P. 63: "To the uninitiated, the court clerk seems like the dreariest of routiners. Actually, he is preoccupied with neither voluminous docket books nor prosaic files. He is not the obscure functionary of tradition. He is a vital part of the court—the conduit between all those who have business with the court and the magistrate himself. In a sense, he is even more important than the magistrate. Magistrates come and go in the life of a district court. But the clerk stays on. He is permanent, fixed, intrenched. He is the man to see."

³ P. 86: "Criminal bail, particularly as it is related to the professional bondsman, is one of the unsolved problems of American city life. The history of the bail-bond business in New York City since 1900 is a record of scandals, well-intentioned attempts to regulate the evils by the making of new laws, and recurrent scandals. The spasmodic campaigns which have been conducted have not materially changed the personnel or the activities of those engaged in the furnishing of bail. The business has its roots deep in the political texture of the city.

"Perhaps the most important fact about bail is that it creates bondsmen and provides them with the means of livelihood."

⁴ P. 142: "Probation, properly administered, has a twofold function. First, it is a method of investigation. It provides for the consideration of the judge information concerning a defendant on the basis of which the judge may determine more wisely what his sentence should be. The second and more familiar aspect of probation concerns the supervision of the convicted person after sentence has been suspended and probation ordered."

support Judge Seabury's findings. "The Magistrates Themselves," is the title of another interesting chapter. Here we have excerpts from the testimony given in the Seabury investigation by some of the magistrates respecting their qualifications for office and their appointment thereto. "Magistrate August Dreyer stated that, when his law practice dwindled, he explained his predicament to his district leader and demanded 'recognition' for his eighteen years of work for the Party. His leader agreed, and in due time, the appointment came. Edward Weil, who until his recent death was a city magistrate, was quite frank in stating that he got his appointment as a reward for his long service to the Democratic Party, after threatening to get out of the party unless he got 'recognition.'" We are told of the manner of appointment of Magistrates McQuade, Maurice Gottlieb, Earl A. Smith, Henry M. R. Goodman, Silberman and Brodsky. "Magistrate Norris enjoyed something of an advantage over other aspirants to the magistracy. She was not obliged to intercede with any district leader; she was herself a co-leader of the Tenth Assembly District, the other leader being George W. Olvany."⁵

What a sorry spectacle! But this is not all—nor indeed the most serious aspect of the problem. What is far more serious is the authority exercised by the district leaders after appointment. Professor Moley puts it neatly: "The notions of the district leaders as to magisterial fitness were quaintly direct, secure in a sort of medieval proprietorship over the little principality of their districts. Many leaders, it was shown, maintained an arrogant authority over those whom they had elevated to the magistracy."⁶ The removal by the courts and the resignation while under fire of a number of magistrates were the immediate consequences of the Seabury investigation. But they, of course, did not solve the problem.

It will be substantially solved when the appointing power—the Mayor—is vigilant in "The Search for Better Magistrates." They *can* be found.

I hope—and I have confidence—that Mayor-elect LaGuardia will find them.

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CASES ON THE CONFLICT OF LAWS. Third edition. By Ernest G. Lorenzen. St. Paul: West Publishing Co., 1932, pp. vii, 1118.

The work of the American Law Institute in connection with the Restatement of the Law of Conflict of Laws, commenced a few years ago and still in the process of completion, has resulted in a critical analysis of principles of Conflict of Laws, particularly by the law schools of the country.

The presentation of a new case-book is therefore timely and of considerable interest to the legal profession.

⁵ Pp. 220-230, quoted from the Seabury Report, pp. 31-44.

⁶ P. 230.