

substitute a conception of science in terms of rules of procedure. He distinguishes between the *structure* of a science, i.e., its rules of procedure, and its *corpus*, i.e., the set of propositions accepted at a given time in accordance with the rules of procedure of the science. When a scientist changes the corpus of a science, either by incorporating new propositions or eliminating old ones he makes a *scientific decision*. The rules of procedure state the conditions which must be satisfied before a change in the corpus is permissible. This is the heart of Professor Kaufmann's doctrine, and he devotes many pages to a consideration of the logical status of the rules of procedure. About one-half the volume is concerned with various methodological issues in the social sciences as seen from the point of view of Professor Kaufmann's conception of science.

Professor Kaufmann's analysis of a relatively neglected aspect of scientific method has merit, but his repudiation of the traditional conception of the subject is unnecessary. Little work of value has been done in the formal analysis of the rules of scientific procedure. Professor Kaufmann's volume is an attempt to isolate the logical elements in that process. If his results seem to amount to no more than truisms, they are nevertheless necessary as part of a complete understanding of methodology. He has unfortunately been content to leave his analysis at the descriptive level. Thus, most if not all of his results are of the kind "there are three different types of correct scientific decision in a science  $S$  concerning a given proposition  $p$ :  $p$  is incorporated into  $S$ ;  $p$  is eliminated from  $S$  without being replaced by an incompatible proposition; or  $p$  is eliminated and replaced by a proposition incompatible with it." Statements of this sort have the virtue of generality, but it is a generality of a kind different from that exhibited by modern logic. They are nothing more than descriptions, and differ from the fruitful concepts of contemporary logic, such as that of the propositional function, in that no general propositions of significance are derivable from them. That is to say, it is a generality without power. Furthermore, Professor Kaufmann's analysis is not inconsistent with the traditional view of the domain of scientific methodology which occupies itself with the problems of perception, discovery, explanation, verification, hypotheses, and so on. It is supplementary to that view and perhaps even a necessary prolegomenon to it. But to regard the problems of methodology, as Professor Kaufmann apparently does, as exhaustible through the logical analysis of procedural rules of the kind with which he is concerned is to maintain a position which is clearly untenable.

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*The Selection and Tenure of Judges.* By Evan Haynes. Washington: National Conference of Judicial Councils, 1944. Pp. xix, 308.

This work is the fifth in the noteworthy Judicial Administration Series published by the National Conference of Judicial Councils for the purpose of promoting a more efficient judicial system. Previous volumes have dealt with court organization, appeals in criminal and civil cases, and traffic courts. The present volume turns to a problem basic in judicial administration, the selection and tenure of judges.

The book is of course primarily concerned with the American situation, and some sixty pages are devoted to summaries of federal and state constitutional and statutory

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provisions on selection and tenure of judges, together with an analysis of the changes that have been made in those methods during our history. But for comparative and background purposes Haynes has included also an interesting chapter on judges under the Stuarts, and two more directly relevant chapters on the contemporary English judges and on the methods of judicial selection in France, Italy, Germany, Canada, Latin America, and the Scandinavian countries.

The effect of this valuable comparative material is to emphasize the oddity of the practice of electing judges which most of our states embraced during the period from 1830 to 1850. The author gives a chapter to an examination of the "democratic revolution" which brought the elected judge onto the American scene. His conclusion is that the change to election was not a result of rational analysis of the needs of the judicial system, but was a by-product of "the ideas and impulses of a violent swing toward the democratization of government generally. The more mature and seasoned countries of Europe, who experienced the same revolution in government, preserved the idea that judges should be competently selected, and free of political pressure; but in America, the ebullient enthusiasm and intemperance of youth and inexperience carried all before it."

It is not necessary, of course, to go to other countries for data on elective versus appointive systems, since our own federal judiciary supplies the best possible comparison on this point. Haynes takes fully into account the weaknesses that have developed in the system of appointed federal judges, who at the district level at least have become senatorial patronage. And he is fully aware how frankly political the Supreme Court was in its earlier days. But with all its defects, he has no hesitation in concluding that the federal judiciary constitutes a better body of judges than those of any state.

Because the election of judges was originally supported on the ground that it would give more democratic results and bring the judges closer to the people, Haynes devotes a separate chapter to the question whether elected judges with short terms are more "liberal" than appointed judges with secure tenure. The method he uses in making this difficult comparison is to show a considerable number of instances in which the United States Supreme Court upheld the constitutionality of advanced social and economic legislation while state courts with elected judges were ruling against the same or similar laws. Probably an equal number of instances could be discovered where state courts were ahead of the Supreme Court, but in any case the evidence would seem to suggest that the method of selection has little relevance to the conservatism or liberalism of the judges selected.

The closing chapter of the book presents a classification of various methods that have been proposed to improve the operation of both the appointive and the elective systems. Particular attention is given to proposals aimed at having some person or body name several candidates from among whom some other person or body must select one. The author gives over sixty pages of references to law review articles or other sources in which selection proposals of various types have been discussed. The book should serve as an invaluable source of information, and as a stimulus to increased efforts toward reform of an institution in which Americans can take little pride of authorship, the elected judge.

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