

BOOK REVIEWS

Courts of Injustice. By I. P. Callison. New York: Twayne Publishers, 1956. Pp. 775. \$6.00.

It is interesting to speculate whether this lay appraisal of the administration of justice in American state courts, and of the proposals for reform, was in fact intended primarily for laymen, to whom it is addressed, or whether the author's real design was to shame, frighten and provoke to action members of the legal profession. If the former, the length, detail and technicality of the book will limit greatly the number of lay readers. If the latter, the author has overshot his mark by so far as to antagonize and repel even those lawyers already working actively for comprehensive judicial reform. In any event, notwithstanding Mr. Callison's professed confidence in the ability of laymen to understand matters of practice and procedure, it is reasonable to assert that only a lawyer can judge the merits of the book. Even a lawyer will find the merits difficult to judge because the book is intemperate, relatively unorganized and repetitious.

Of these obstacles to objective appraisal only the first needs explanation. The intemperance does not stem from holding the legal profession responsible for what the author characterizes as a failure of the American system of justice—particularly in the state courts. Although his language may be harsh and extreme, his factual summaries of the disgraceful condition of criminal justice, and the delay, expense and inefficiency of civil justice go a long way toward supporting his judgment of condemnation. Mr. Callison's peculiar intemperance consists in ascribing the alleged failure to intentional subversion of the system by several generations of American lawyers interested only in self-aggrandizement and financial gain. The bases for this charge, repeated so many times in the book, are: (1) the hypothesis that the main cause of the failure in the administration of justice in the state courts is the "debasement" of the judge through the abolition of his common-law power to sum up and comment on the evidence, and otherwise to assist and instruct the jury with regard to the facts of a case as well as the law, and through the substitution of the elective for the appointive method of selecting judges; (2) the alleged predominance of lawyers in the legislatures which early in the last century voted these changes; and (3) the acquiescence in these changes by the majority of the legal profession ever since.

Of more value than any attempt to refute on historical bases a charge so recklessly conceived, and so meagerly supported, is the question of whether Mr. Callison has helped to identify the defects (and their causes and consequences) in the administration of justice in the state courts, and whether he has suggested any worthwhile remedies. This reviewer believes that he has done so.

First, as to the author's emphasis on the consequences of depriving the judge of control of various incidents of the trial, such as initiative in interrogating and qualifying prospective jurors, the right to sum up and comment on the evidence and initiative and freedom in instructing the jury, a comparison of proceedings in the federal, English, and Canadian courts with those in our state courts gives substantial support to Mr. Callison's position. Insofar as even the most comprehensive and enlightened of recent reforms in state court procedure do not restore these common-law functions and powers of the judge, Mr. Callison is directing attention to an area in which the legal profession continues to be remiss.

With respect to judicial selection, the organized bar of Illinois, Chicago and many other parts of the country have demonstrated by costly and protracted efforts that they would take no exception to Mr. Callison's strictures on the evils of selecting judges for short terms by adversary elections. His position is sound, but not novel. Recent experience in several jurisdictions indicates that elimination of this evil awaits, not lay initiative to coerce the legal profession, but lay support for the lead offered by lawyers.

The same is true to a greater or lesser extent of a number of the other defects identified by Mr. Callison: the disgrace of the "inferior" court not of record, which is for a large proportion of the people the sole contact with the administration of justice; the waste of trials *de novo* and multiple appeals; the inefficiency of operating numerous autonomous courts of limited jurisdiction; the lack of integration of the courts under central administrative management; the absence of statistical information regarding the business of the courts; obsolete and complex rules of evidence and procedure and the governing of practice by statute rather than by rules of court. Individual lawyers and the organized bar in many jurisdictions have been working to minimize or eliminate these evils. Neither the effort nor the degree of success, disappointing though the latter often may be, is recognized by Mr. Callison. Although many lawyers, including its authors, may wish that the new Civil Practice Act in Illinois had been promulgated by rule of court rather than as legislation, Mr. Callison's readers might well be astonished to learn that this fine and progressive product officially emanated from the profession he so uncompromisingly condemns.

Certain other defects identified by Mr. Callison belong in another category. Excessive demand for jury trials in both criminal and civil cases undoubtedly contributes more to delay than any other single cause. However, this is an area so basic that it concerns more than just the legal profession. The lawyer's error, when it occurs, is merely one of judgment as to which mode of trial will best serve his client's interests. Much the same is true of the taking of appeals on points not affecting the merits, though the right to do so, if it exists without limitation, undoubtedly constitutes a defect in the law which our profession must accept the responsibility of correcting. On the other hand, the failure of individual lawyers to make use of available procedures for expediting the dis-

position of the case probably constitutes, as Mr. Callison indicates, a dereliction of duty both to the court and to the client.

Despite variation of conditions by locality and some room for dispute as to the facts, Mr. Callison seems generally sound in his judgment that assignment of counsel for the defense of indigent prisoners is unsatisfactory, and that the scope and availability of legal aid in civil matters are inadequate. Unquestionably, he is justified in his criticism of the lack of coordination of the efforts of police and prosecutors in law enforcement, though difference of opinion may be warranted regarding his unqualified condemnation of vesting the function of prosecution in an elected official.

It is doubtful that there is much agreement in or out of the legal profession with Mr. Callison's view that the selection of judges from the legal profession is an evil. What he has in mind is that the judiciary should constitute a separate branch of the profession. He states three reasons: (1) partisan advocacy is poor preparation for the exercise of the judicial function; (2) the bench should not be used as a stepping stone to better practice; and (3) a special course of training is needed for judges. Of these, the first is not persuasive while the second seems to relate more to compensation and security of tenure in judicial office. The third, though a tenable position supported by the experience of civil-law countries, rests partially on current functions of judges in sentencing convicted prisoners, which Mr. Callison himself more soundly says should be withdrawn from the courts altogether. It finds further basis in the adjudication of family matters, in which he properly recognizes the investigatory, diagnostic and advisory role of psychiatrists and social workers.

Finally, Mr. Callison challenges the entire adversary or contentious method of adducing facts, although he concedes the propriety of further study of this matter. After further study he probably will decide that the defect is the lack of personnel in the courts to supplement, when desirable, the evidence adduced by the adversary process. Mr. Callison also suspects that the "private, for-hire lawyer" is himself an evil to be abolished, but this seems part and parcel of the intemperate idiosyncrasy mentioned at the outset of this review. The failure to mention the work of committees on character and fitness and grievance committees is no doubt due to the author's conviction as to the futility of all efforts to refine or to redeem those who follow so abandoned a career.

If, with the exceptions noted, the defects and their causes and consequences in our system of justice are rather well identified by Mr. Callison, what may be said of the remedies he proposes? Many of them, implicit in the description of the evils to be eliminated, are conventional and based on the best professional thinking on judicial administration. The evil of the lack of power in the judge to control incidents of the trial and effectively assist the jury is, of course, to be met by restoring to him his common-law functions. The courts should be consolidated under central administrative management equipped with a staff for collecting and analyzing statistics. The rule-making power should be restored

to the courts and should be exercised to simplify practice and procedure, reduce delay and expense and minimize the necessity of new trials and the use of successive appeals. Pre-trial conferences should be mandatory, not so much to stimulate settlements as to eliminate spurious and trivial issues and obviate the introduction of unnecessary evidence. Informal, summary procedures employed so effectively in the lower courts in England and in some of our small claims branches should be made available and utilized in an ever-increasing proportion of all litigation. Conciliation, aided by expert staff personnel charged with responsibility for independent investigation and advice to the judge, should be extended in all courts handling family matters and ultimately introduced in other types of litigation. The use of the jury, particularly in ordinary civil cases, should be discouraged.

With respect to judicial selection and tenure, Mr. Callison firmly advocates appointment for life tenure during good behavior by a responsible officer answerable to the people. However, he is willing to have each judge run on his record, without opposition, at increasingly infrequent intervals, as a safety valve for popular control. The problem is to determine who should have the power of initial selection. Due consideration must be given to the objectives of providing for informed and dispassionate appraisal of qualifications, affording to the electorate in its various elements at least an indirect voice, assuring the independence of the judiciary from the executive and legislative departments of government and minimizing the influence of partisan politics. As one who for several years has been working with a joint committee of the Illinois State and Chicago Bar Associations on the same complex problem, this reviewer thinks Mr. Callison here contributes a suggestion which merits consideration.

After summarizing and commenting on all the plans which have been supported or tried in various jurisdictions in this country, Mr. Callison suggests the following: Divide the state into districts from which members of a commission on judicial selection would be elected by the people. The commission would then appoint a "judicial manager" or chief justice who in turn would appoint the judges and serve as their executive head, aided in his latter capacity by an administrative staff answerable to him. Both the judicial manager and the several judges would run on their respective records at elections held at stated intervals.

If suitable candidates would run for and be elected to membership on the commission, this plan may well be the best yet offered to meet all the objectives. Mr. Callison's view that lawyers should be ineligible as candidates for the commission does not seem sound, although admittedly it would be difficult to decide what the minimum or maximum proportion of lawyers to laymen should be. Certainly the purely lay commission envisaged by Mr. Callison could not function satisfactorily unless advised by committees of the organized bar. He further suggests that the same commission, or a separate body composed solely or predominantly of laymen, should constitute a judicial council to recommend

improvements in the law and its administration. Here again his antagonism to the legal profession operates to distort the otherwise sound view that lay representation on such a council is desirable.

In the field of law enforcement Mr. Callison would organize the prosecutor's office on a state-wide basis headed either by an officer under the chief justice or by the attorney general, and in the latter case combined with police and investigatory functions. The first of these alternatives, though patterned after the French system, seems incompatible with Anglo-American concepts of justice. The second, though controversial, has considerable support in this country and finds its precedent in our federal Department of Justice. With a view to eliminating chicanery in the trial of criminal cases and breaking the alliance supposed to exist between some elements in the legal profession and organized crime, Mr. Callison would extend the institution of the public defender to the point of excluding altogether the private practitioner from the criminal field. Surely such a remedy is too drastic and would prove a menace to the protection of individual liberty. The same may be said of the author's preference for the continental inquisitory system over the Anglo-American accusatory system.

Similarly extreme are remedies proposed in the civil field. Combining the objectives of adequate, publicly supported legal aid and the extension of conciliatory procedures with his unmitigated distrust of the "private, for-hire lawyer," Mr. Callison would create the office of public counselor to screen all proposed litigation, attempt conciliation and in the event of its failure, provide advocates for the opposing parties. As an alternative to the exclusion from the courts of the private practitioner, he proposes the division of the profession between trial lawyers and client care-takers after the manner of the English distinction between barristers and solicitors and the French distinction between the *avocat* and the *avoué*. Nowhere does he explicitly indicate the basis for his conviction that the adoption of either of these remedies would assure the success of measures to determine the ethical qualifications or applicants for the profession of advocacy and to discipline those licensed therefor—measures which under our present system he evidently regards as wholly ineffective and futile. Implicitly his reliance is on the smaller number of persons involved, the reduction of temptations to unethical conduct and a probationary period of apprenticeship. To those who look upon the integration of the bar as tantamount to socialization of the profession, Mr. Callison's rejection of that remedy as a mere palliative, and the more extreme character of his own proposals, may afford food for thought.

Courts of Injustice is a peculiar mixture of surprisingly thorough scholarship and half-baked polemic, of sound and absurd suggestions, of creative and nihilistic thinking, of conventional, reactionary and revolutionary ideas. Is it a book worth reading in its entirety? This reviewer thinks it is not.

WILLIAM M. TRUMBULL*

* Professor of Law, Northwestern University.