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Book Reviews

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BOOK REVIEWS

SOME PROBLEMS OF PROOF UNDER THE ANGLO-AMERICAN SYSTEM OF LITIGATION. By *Edmund Morris Morgan*. Columbia University Press, 1956. Pp. 207, \$3.50

Though he often complains about red tape and legal rigmarole, it is obvious even to the layman that the courts could not function without the aid of an intricate set of rules devised to meet an infinite variety of situations. On the other hand, the lawyer and the judge cannot deny that in some instances the rules may be an impediment to the administration of justice. This paradox is examined and brilliantly illuminated in "Some Problems of Proof under the Anglo-American System" by Edmund Morris Morgan.

He pleads the cause of directness, simplification and common sense and urges the adoption of rules which would make it less difficult to arrive at the truth. The six lectures of which this book is a compilation constituted the thirteenth series of James S. Carpentier Lectures sponsored by the Columbia University School of Law. In them Prof. Morgan has made a significant contribution to the study of the adversary system and the law of evidence. Combining an examination of the historical background with the practical application of procedural rules, he has reached conclusions which deserve careful consideration by the legal profession. Experience as a trial lawyer and as a student and teacher of procedure and evidence at Vanderbilt, Harvard, Yale, and other universities, has made his an authoritative voice.

He sees with great clarity the difficulties which beset the lawyer in the preparation of his case, the judge in conducting a trial, and the jury in understanding what is required of it. Many problems, he believes, are due to inconsistencies, ambiguities, unrealistic limitations and the difficulty of finding words to convey exact meanings. He does not suggest that he has a panacea but he submits a searching diagnosis and recommendations which he feels would eliminate some of the obstructions in our system of litigation.

Prof. Morgan traces the history of pleading and proof and points out the waste of time, energy and money and the ultimate injustice which may result when a dispute is not clearly defined and when irrelevant issues are injected. Though he would like to see "a complete renovation" of the rules of evidence, he advocates as a first step acceptance of provisions of the Federal Rules of Civil Procedure. In answer to the objection that the rules can be circumvented he says, "If the Bench and Bar are determined to make the rules unworkable, they will soon be construed into nothingness. If the Bar is recalcitrant but the Bench determined to enforce the rules, they will slowly become effective. If both Bench and Bar accept them as an instrument for making the trial of a case a proceeding for the speedy determination of litigation, they will soon accomplish their purpose. The Bench and Bar can make a cumbrous machine turn out a satisfactory product; they can also so operate a first-class machine as to produce inferior goods."

A detailed analysis of judicial notice leads Prof. Morgan to conclude that, subject to safeguards against abuse, more liberal exercise of judicial notice would be a healthy change. As in the matter of the revision of the rules of pleading and discovery, he feels that the opportunity of the courts to "make much more frequent resort to available sources of indisputable accuracy" would measurably help in restricting a trial to those issues which are genuinely in dispute.

In his lecture on "Functions of Judge and Jury" Prof. Morgan presents a penetrating study of the basic problem of the allocation of the burden of proof and the burden of persuasion and the translation of legal rules into language which the juror can readily understand and interpret. Like so much legal jargon which probably baffles the layman more often than it informs him, the charge to the jury, Prof. Morgan maintains, may be meaningless or actually misleading. He urges the use of simple language equally intelligible to judge, jury and appellate judge. He considers the problem of

semantics and the philosophy of the law and concludes that our system deprives jurors "of the effective assistance of the judge in the very situations where it is most needed. It is time that we ceased our inconsistent attitudes towards them—treating them at times as a group of low-grade morons and at other times as men endowed with a superhuman ability to control their emotions and intellects."

Anyone who doubts the effectiveness of our ancient rules of evidence—and better still, anyone who does not doubt—would do well to study Prof. Morgan's three lectures on hearsay. In these he surveys the hearsay rule from the inception of trial by jury to the present, explaining the original reasons for excluding hearsay and showing the evolution of the rule and its application today. On the basis of the inconsistencies which he points out and the fact that at times the most reliable evidence may be inadmissible under the present rule, he believes that thorough reexamination is essential.

His book is not only an impressive work of legal scholarship but also a challenging piece of constructive criticism. Prof. Morgan approaches his subject with academic thoroughness and deep conviction but, unfortunately, with considerable doubt as to the likelihood that his suggestions will be accepted. In the light of New Jersey's proposed revision of its rules of evidence, it is possible that other states may review their antiquated laws, however. In so doing they could find much help in Prof. Morgan's book.

Fed. Dist. Court, Chicago
JULIUS J. HOFFMAN

SUICIDE AND HOMICIDE. SOME ECONOMIC, SOCIOLOGICAL AND PSYCHOLOGICAL ASPECTS OF AGGRESSION. By *Andrew F. Henry and James F. Short, Jr.* The Free Press, Glencoe, Illinois, 1954. Pp. 214. \$4.00.

The authors maintain that, while most of the social sciences have been concerned with the study of acts of violence and have found a theory, it is "the sociologist who has been most directly concerned with these forms of violence because of their strong and persistent relation-

ship with other sociological variables." Therefore, the authors have made an attempt "to re-examine these relationships in the light of additional data presented and to suggest tentatively certain points of congruence between the disparate theoretical formulations which have developed independently in the various disciplines."

The authors' re-examination is mainly oriented toward a difference between sociological and psychological "determinants" as to the choices of suicide and homicide. These two chapters seem to me the most fruitful and thoughtful and least controversial. The first chapter, dealing with the aggression, frustration and "the business cycle," brings, perhaps by necessity, questionable conclusions based on inconclusive data; for is there enough material available to examine suicide by sex, race, age, income, and so on? They themselves seem to feel that further research is needed, when they state that "research directed at the concentration of suicide and homicide within the central disorganized sectors of cities would *permit* (italics by the reviewer) a test of the hypothesis that the high suicide rate is accounted for by persons with minimal involvement in meaningful relationships with others while the high homicide rate occurs among the ethnic groupings and as part of the operation of the 'underworld.'"

HANS A. ILLING
Los Angeles, Calif.

THE PRAIRIE PRISONS. By *Walter A. Lunden.*

Ames, Iowa, Iowa State College, 1955. Pp. 87

This is a tabular and graphic presentation of some prison statistics of the nine North Central States from 1930 to 1954. Annual data on the total number confined at one time and the total number committed during a year are given in Part I for the nine states considered as one population unit. The age distributions and types and length of sentences for 1940 and 1950 are presented. Offenses of those committed in 1950 are stated. In addition the recidivism record upon admission is given for the men released during 1945. Part II presents annual data on a state by state basis on the number of persons confined and the number committed.