REVIEWS AND NOTICES

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The Machinery of Justice in England. By R. M. JACKSON. Cambridge: At the University Press. Toronto: The Macmillan Company. 1940. Pp. viii, 342. ($5.25)

It is perhaps unfortunate that the present book appears at a time when everyone's thoughts are so fully concerned with the tremendous events affecting our external relations, since this will prevent it from receiving the attention it deserves. Dr. Jackson has written an important and extremely interesting book, designed to shatter, so far as our internal administration of justice is concerned, that very attitude of complacency which, with regard to our position in the external world, has in large part led to the chaotic condition in which we find ourselves at the present time. The author is concerned with setting forth the problems and shortcomings presented in the actual working of the English legal system, problems which, as he points out, are ignored in law teaching in England, and we can also add, in this country as well. As he states in his Preface :

> "The best introduction to law is a study of the institutions and environment in which lawyers work. It is prescribed, under the title of "The English Legal System", for first year study in some law schools, although academic tradition has there succeeded in imposing a mass of historical study to satisfy the idea that it is cultural to know what happened in the middle ages and not cultural to know what happens in the twentieth century. My own impression, and I have been teaching this subject for some years, is that the needs of the law student and the needs of those interested in public affairs are here exactly the same—to know the present system for administering justice, how it really works, and what criticisms and suggestions have been made.

In discussing the actual operation of the English legal system, Dr. Jackson's outspoken criticisms and hard hitting attacks on the fulsome praises so frequently bestowed on the existing system by many highly placed persons both on the Bench and in the legal profession, will undoubtedly arouse the ire of many practitioners who are inclined to regard the English system of the administration of justice as a model of perfection. In Canada on those rare occasions when reforms of procedure are mentioned by the legal profession, the first thought is to "see what England does", and if a thing is done there it *must* be right. This is not the time or place to consider the extent to which such an attitude of mind is a phase of an inferiority complex due to a peculiar "colonial" attitude which vocally, at any rate, the profession might disavow. The fact remains, it is true. In many respects the profession in Canada has a higher regard for the English machinery of justice than the English themselves. That is why this book is doubly important to the Canadian reader. Let him read the criticisms of the English system which Dr. Jackson collects and discusses along with proposals which have been made for its improvement, largely

by persons outside the legal profession, and he will find a peculiar parallel in our Canadian system. Indeed, in the reviewer's opinion, many of the criticisms which have been made of the English system could be made with much greater force of our Canadian system since the social environment in which the English machinery of justice has developed has not been transplanted to this country, nor have we in our judicial appointments—and as Dr. Jackson points out (p. 20) "for the common lawyer the revered figure and the oracle is the judge"—attained anything like the calibre of the Bench in England, imperfect as Dr. Jackson considers the system of judicial appointment in England to be (pp. 208—209).

In view of the fact that there have been rumours in the air of improving judicial administration in this country, rumours which have brought forth violent opposition from many quarters, perhaps the reviewer may be forgiven if he quotes rather extensively from the present volume various excerpts which seem to be particularly appropriate to the prevailing situation here and which may spur the reader to a further examination of this fascinating volume.

Dr. Jackson opens his story of present day administration of justice by a historical introduction which condenses the growth of the English court system into twenty compact pages. After this he discusses in detail "Civil Jurisdiction" and "Criminal Jurisdiction". Under these heads are examined the functioning and jurisdiction of various courts, the various divisions of the High Court and modes of trial and appeal. The "contest" or "sporting" theory of justice in which the judge sits merely as an umpire; the unsatisfactory method of calling expert witnesses on both sides of an issue (in most cases witnesses with a big newspaper name who are not necessarily the best qualified research men) rather than having an expert appointed by the court; the various procedures for the prosecution of criminal offences in magistrate's courts and the complicated system of other criminal courts; all are examined critically and constructively. In these chapters, as elsewhere in the book, the author is extremely critical of the attitude manifested by the judges towards reform in procedure. "It must, however, be remembered that the judges have not in the past shown much interest in the reform of procedure" (p. 68). "It must be remembered that the death or retirement of one of two senior judges may enable proposals that are now bitterly resented to be carried through without much difficulty" (p. 55). Do our readers recognize any familiar note here?

On the problem of "the Technique of Sentencing" (pp. 168 *ff.*), Dr. Jackson deals with what is undoubtedly one of the weakest spots in the system of administration of criminal law. It is, however, a branch in which the profession does not seem particularly interested and in which the Bench would undoubtedly, as it has in England, resent any change. The sentencing of convicted persons is undoubtedly of as great if not greater importance than any other part of a criminal trial. Yet what do we know of the basis on which sentences are prescribed, either by the legislature in the original statutes or by the discretion of the judge within the limits of the statute? What guides a court in inflicting large or small sentences? Does a court know anything of the likely effect of the sentence it is imposing? Recently, in England, a Committee on corporal punishment reported in favour of the abolition of corporal punishment. Indeed in a recent Ontario case, *Rex* v. *Childs*, [1939] O.R. 9, Middleton J.A. quotes

extensively from this report and indicates that in future the Ontario Court of Appeal should "in all but very exceptional cases . . . . exercise . . . . . our discretion by refusing to uphold sentences involving whipping". It is interesting to observe this swing in attitude since, in the very Report quoted from, the judges of King's Bench Division in England had expressed the very definite view that corporal punishment operated as a useful deterrent. While this "hoary myth" (so styled by Dr. Jackson) was thoroughly exposed in the Departmental Report (p. 175), nonetheless the judges, who be it remembered have the task of imposing sentences, considered that there should be an extension of flogging to certain sexual offences, although as the Report indicated, "the case against flogging is perhaps stronger for sexual offences than for any other type of case" (p. 175). The extent to which the power of imposing sentence should be removed entirely from the hands of the judiciary is canvassed and while this solution, to the author, seems the soundest view, he realizes that judicial opposition would probably prevent the adoption of any independent tribunal versed in criminology passing sentence, and therefore suggests that the Bench should at least be provided with greater facilities for consulting officials having some expert knowledge of the subject. As he points out, at the present time the selection of magistrates and judges is made without any regard to their fitness to do criminal work and even if a person experienced in criminal law were appointed, it does not follow, in his view, that he has any experience of the effects of sentences. "No one can appreciate the *effect* of sentences unless they have investigated what has happened to the offenders. An 'experienced' judge means one who is well used to trying defendants, and who, generally speaking, makes an excellent job of that side of his duty. But when we come to the passing of sentence, our 'experienced judge' is experienced merely in making up his mind and delivering sentence with complete composure" (p. 178). Further, as the author points out, what is the best thing to do with an offender requires specialized knowledge and in his opinion lawyers as such are no better equipped for passing sentence "than a chartered accountant". The profession needs to be told these things now and then, even though any change will likely come from pressure outside the profession.

Capter IV on "The Personnel of the Law" furnishes one of the most interesting discussions of the volume. The function of solicitors and barristers and the possibility of their amalgamation in England is discussed fairly and objectively, although we note that Dr. Jackson is a solicitor. He inclines to the view that the two should be amalgamated although he is willing to admit that the objectivity in outlook of a counsel divorced from the interests of a client has considerable to be said in its favour. His discussion of legal education in England is comprehensive and not altogether flattering to the form of education which is carried on by the Inns of Court for the training of barristers. The following excerpt (p. 199) may afford food for thought and is reproduced without comment.

> "The Inns of Court are immensely wealthy bodies, possessed of good libraries and other facilities. They are in a better position to run a law school and foster advanced studies than any other organization in the country. As it is, the Council of Legal Education cannot be said to be particularly inspired or inspiring. Vast sums of money are distributed each year in scholarships and prizes. The finances are the private concern of the Inns. Any attempt to investigate this state of

affairs would be bitterly resented. The Cambridge Colleges were in a similar position years ago; they resented criticism and regarded enquiry as a monstrous interference with private property, yet Royal Commissions were forced upon them and substantial reforms were carried out. The changes are now regarded as beneficial, the accounts are published annually, and the idea of private property is less prominent than that of public responsibility."

His discussion of the central figure in legal administration — the judge — is particularly illuminating. We are prone to regard the high salaries paid to judges in England as something to be emulated in this country. Dr. Jackson does not seem to be particularly favourable to the extremely high salary and considers that it is necessitated in England by the fact that men must be tempted to leave lucrative practices; that such temptation will only bring in men of advanced ages, of say fifty-five, and that judgeships are accepted because at that time "life on the Bench will be a welcome relief and at the same time constitute an insurance against the inevitable decline in practice that must occur if one continues at the Bar when he is growing old" (p. 206). He doubts whether these high salaries are necessary to prevent corruption, pointing to the French system in which the judge enters the judicial profession at an early age, and it is refreshing to know that politics apparently plays as great a part in the appointment of judges in England as it does in this country, as the following excerpt from an obituary of a judge in the London *Times* which the author quotes indicates: "The Bar, however, did not regard him as a likely candidate for judicial honours till his astonishing Parliamentary success at the General Election . . . . ." (p. 208).

Dr. Jackson is quite outspoken in his demands for the necessity of a retiring age for superior judges. He points out that the average age of the High Court in 1933 was 64, the Court of Appeal 68, and the House of Lords 65. He states, as if it were something extraordinary, that "the High Court then had four judges over seventy, the oldest being eighty-two" (p. 210). Although in other professions retiring ages have been set, the Bench seems to be bitterly opposed to any such move and in fact the author states that the present Lord Chief Justice is reported as saying: "I shall never resign or retire as long as I live" (p. 211). Dr. Jackson is fair enough to admit that a retiring age undoubtedly would exclude men who had years of good work before them, but it is important, and this certainly applies to this country as well as England, to realize that as he states, "judges must inspire confidence, and that, on the whole, people do not care to be judged by those who belong to a generation that is generally inactive. It was difficult to escape the feeling in Mr. Justice Avory's court that a man so old should have no place of power in present society" (p. 211). Dr. Jackson at least has the courage to speak out and he indicates that successful lawyers are seldom critical of the legal order, and so long as judges are chosen from the successful lawyer group they are not likely to be critical of the legal order either. Further, he indicates that in England, at least, the appointment of judges late in life and their continuance on the Bench as elderly men, not only produces a disposition to resent change, but a certain "touchiness" about their own position. The peculiar position of Lord Hewart in the flurry which occurred in England when an attempt was made to pass over Lord Justice Slesser as a presiding

judge in the Court of Appeal seems to warrant the remark of Dr. Jackson that "in the whole of this remarkable outburst, there is no appreciation of the fact that the judiciary exists for the public service and not for its own glorification" (p. 213). Lest the reader think the author prejudiced in such outspoken remarks, Dr. Jackson requests him to draw his own conclusions by pointing out that although "the Judicature Acts 1873–5 provided for a conference of the judges to be held from time to time, the idea being that the judges might make proposals on matters where change is needed; in over forty years not a single suggestion for change has come from the judiciary as a body" (p. 213).

Perhaps of even more importance in his discussion of the judicial office is the attitude of opposition which the courts take towards recent legislation. This has been the subject of much writing of late and Dr. Jackson sums it up by stating that "the courts are in effect applying a political philosophy of individualism or *laissez faire* in a society that has abandoned that philosophy for over half a century" (p. 214). The problem involved here is an extremely difficult one and cannot be solved by the Bench condemning the Legislature or the Legislature condemning the Bench, but requires for its solution an entirely different system of legal education in which an understanding of modern social legislation takes as important, if not more important part than a study of common law principles. In addition, it is also well to bear in mind that a judge of, say seventy years of age, will naturally tend to apply the philosophy of his youth which, at a conservative estimate, will naturally be outmoded by some forty years.

> Dr. Jackson ends this fascinating section with the following paragraph: "It has been customary for lawyers and others to bestow fulsome praises upon the judiciary. The Lord Chief Justice, speaking at the Lord Mayor's Banquet in 1936, said that : "His Majesty's Judges are satisfied with the almost universal admiration in which they are held." After making a generous allowance for the prevailing optimism at such functions it is really a remarkable public utterance. Complacency is a dangerous thing. So also is indiscriminate disparagement. Our machinery of justice is likely to continue in much its present form for some years; improvement is more likely to occur by investigation of its actual working than by apology or abuse."

The discussion by the author of juries in the administration of justice is one that deserves careful attention. He neither condemns, which is becoming fashionable in some circles, nor exhorts with allusions to Magna Charta and other rhetorical adornments, but seeks to discuss the reasons for the dissatisfaction with juries and the elements in their favour. He is definitely opposed to the selection of juries on property qualifications, since the very function of the jury is to be representative of the community and if this be so, the property qualification would seem to collect the opinion merely of one group of society. He believes that much of the criticism of juries is unfounded and due to the fact that courts believe they are better qualified to determine whether a witness is telling the truth or not, an affirmation which Dr. Jackson considers quite unfounded. In the second place, in every trial there must be questions of common knowledge involved and Dr. Jackson believes that a jury chosen at random is much better qualified to apply common knowledge than a select group such as the judges. One cannot help noticing, however, from the decisions

(and Dr. Jackson gives some excellent illustrations) that the courts object to a jury acting on matters of common knowledge, whereas the judges themselves do not seem to be perturbed about any limitations on their own worldly experience. This is a point of view which the reviewer believes extremely important in considering any question of the abolition of juries. The reviewer recalls a case in which counsel were discussing before a Court of Appeal the question of testing an automobile tire for air pressure. An appellate judge seemed completely unable to understand that there were any mechanical contrivances for these purposes, and indicated that he knew perfectly well that the only way it was done was by kicking the tire. This homely illustration does not seem to contradict the illustrations which Dr. Jackson here sets forth, and the other problems he discusses of jury trials are well worth consideration because, as he states, his only desire is that "jury trial shall not be discredited because we work it badly, or because we wish to avoid adequate judicial strength" (p. 232).

Other interesting parts of this book, which teems with interesting observations, deals with the subject of costs of litigation. Dr. Jackson believes that costs are altogether too high and he explains why. He further believes that it is quite wrong that a litigant should have to expend large sums of money because a trial judge makes an error or because the law is uncertain. He is enough of a realist to appreciate that it is hopeless to ask for public money for this purpose, but he makes the interesting suggestion than an insurance fund might be established by making an additional charge of £1 on each proceeding commenced in the High Court, which in a year would produce about £100,000. He further does not believe parties should be allowed to expend what they like on litigation since this enables the wealthy litigant to set the pace which must be met by his poorer adversary, and he suggests that some idea of limited expenditure might be made. Again he points out, however, that we must remember that "every great change in the administration of justice has been opposed by influential lawyers and public men on the ground that it would be 'unworkable' " (p. 251).

The whole question of legal costs is one that is in need of serious consideration, not only in England, but in Canada, and the reviewer believes there is considerable truth in Dr. Jackson's comments to the effect that one of the reasons why nothing much has been done is that the subject of costs is not a matter for legal thought. The following paragraph may be an unpleasant one for the profession to read, but we reproduce it simply because it is only by having these matters thrust upon us periodically that we expect to see something done about a matter of compelling urgency.

> "The men who influence our law most, the judges, the successful barristers and the publicists, all move in a world carefully insulated against the cold discomfort of bills of costs. In books about the law written for general reading, such as Lord Justice Slesser's *The Law* and the late Professor Geldart's *Elements of English Law*, the subject of costs is ignored; *The Book of English Law* by Dr. Jenks has a bare two pages on the topic, from which a reader might think that all is well. The general attitude, fostered by law schools, is that 'the law' is a great body of principles to be studied and applied: to ask whether a man can in reality get any remedy if he cannot afford the costs is regarded as a vulgar and irrevelent intrusion. It may be

said that costs are irrelevant to problems of legal rights, just as facilities for hospital treatment are irrelevant to problems of medical science. Yet lawyers may find, as the medical profession has already found, that they cannot be unmindful of the service that the public should receive."

In a review which has already grown much too long, but perhaps no longer than the importance of the book merits, the reviewer cannot hope to cover all the points of interest dealt with by the author, but a word should be said about the chapter on special tribunals (Chapter VI). Dr. Jackson is liberal enough to speak of special tribunals as special "courts", since he believes that outside the ordinary courts, by which he means those courts which have become regularized and accepted by lawyers over a period of time, there are a number of special courts dealing with new problems and new services established by recent legislation. That these special tribunals, the subject of so much adverse criticism by lawyers and judges, are performing the same type of work as the "lower courts", will become abundantly clear from a reading of this chapter. Many of the matters which lower courts are today called on to deal with, do not involve the resolution of disputes so much as the exercise of the same discretion which courts object to in other tribunals, such as for example, the discretion involved in sentencing, in problems of passing on the fairness of corporate reorganization, etc. On the other hand there are many tribunals not dignified by the name of courts which undoubtedly do settle disputes and decide the rights of the parties before them. It seems useless to decry the growth of these boards and, as Dr. Jackson points out, the problem is to determine on what matters lawyers can make valuable contribution to the working of such special tribunals from those matters with respect to which they have no special abilities. The lawyer is trained in a method of decision. He is, as Dr. Jackson points out, no more gifted in questions of social policy than any other group of educated men. The function of the "law" is to see that a judicial method is observed and not to decry the growth of boards much more competent to deal with matters intrusted to them than the ordinary courts. As Dr. Jackson states:

> "There is a fear among many lawyers that the law courts are declining in importance, so that they may become known as 'the places where they divorce people and try motorists'. The claim of lawyers to handle the making and unmaking of all decisions can only be based upon some notion of it being their right to do so. There can be no prescriptive right of monopoly in public affairs. The danger is that lawyers by striving for an unjustifiable monopoly of judicial activities may develop an attitude that will unfit them for making the very contribution that is really needed."

This is a book which has fascinated the reviewer, since it indicates a new questioning attitude in England regarding law and the administration of justice which has been either totally absent or dormant for too long. The present war is, we believe, one to end lawlessness. Our complacency in external affairs has undoubtedly produced the present disaster. Let us hope that our complacency regarding internal legal administration does not blind us to the possibility of understanding and thus improving the administration of justice within our own borders.

C. A. W.

The Canadian Law of Trade Marks and Industrial Designs. By HAROLD G. FOX. (University of Toronto Studies : Legal Series) (P. 199). Toronto: The University of Toronto Press. 1940. Pp. lxviii, 700. ($18.50).

This book fills a long felt want among legal texts. It will not only be useful to those who have specialized in this branch of law but will also be found valuable to members of the profession who engage in general practice. Notwithstanding the importance of trade marks and industrial designs in business, these are subjects which have been sadly neglected by our Canadian Law Schools. Furthermore, this is the first Canadian text book which has been published on this subject for over twenty years. In the interval the law of trade marks has undergone a complete revision by the passing of the Unfair Competition Act in 1932. The result is that, apart from the Act itself, there has been no general information available for practitioners in this field of law.

Trade marks themselves are by no means new devices. Evidence of their use can be traced back to the fourth and fifth centuries B.C. The laws which have been created for their protection are, however, of comparatively recent development. The book opens with an outline of the history of trade marks and the development of the laws which were passed in England and Canada for their protection. This will be found both interesting and useful as it enables the reader to grasp the fundamental ideas upon which the law of trade marks has been founded. The arrangement of the book is such that the layman can readily acquire a general knowledge of these principles from the narrative portions of the work. Every phase of the subject has been completely covered and an abundance of case law has been cited in support of the propositions discussed.

Considerable uncertainty exists concerning the proper meaning and scope of several sections of the Unfair Competition Act. The wording in some instances is quite obscure. This has made the task of the author extremely difficult and he has been further handicapped by the lack of judicial decisions dealing with these points. There will probably be a difference of opinion among authorities on this subject with respect to the author's statements on some contentious points. He has, however, clearly set out the problems to be faced, which will be of great assistance to the reader in drawing his own conclusions as to the interpretation which should be placed on the Act.

One of the most troublesome sections is number 4. It has been recognized for many years that trade mark rights are acquired by use of the mark in association with wares and apparently it was not the intention of Parliament to change the law in this respect. Under the Trade Marks and Designs Act, the first bona fide user in Canada obtained a monopoly in the trade mark for those wares with which the mark was used, irrespective of whether or not the trade mark had been registered. Section 4, however, makes a fundamental change by requiring the user to register as set out in that section if he wishes to maintain the monopoly which has been acquired through his use of the mark. Unfortunately, however, this section is so worded that several problems may arise thereunder. Naturally, it would be beyond the scope of the work to suggest changes which should be made in the Act but the author has given a detailed analysis of the

section, which we can hope may lead to a clarification of the law by Parliament.

The author has not confined his work to the substantive law on this subject but has dealt also with the practice before the courts and departmental offices. The special rules of evidence applicable to trade mark cases have been discussed and forms of pleadings based on some of the more important cases have been included in the appendix. The book will, therefore, be found an excellent guide in the conduct of litigation.

The author has not overlooked legislation outside of the Unfair Competition Act and our industrial design legislation, which is pertinent to this subject matter. There is a chapter devoted to trade libel. There is also one dealing with the provisions of the Criminal Code, which supplements our other laws relating to trade marks and designs. These are mainly for the purpose of providing penalties for the fraudulent use of trade marks and designs. Other independent, but closely related legislation, has been mentioned, such as The Timber Marking Act, The Precious Metals Marking Act and portions of the Dominion Trade and Industry Commission Act.

One of the outstanding features of the work is the use of indices of cases. In addition to the usual index under the names of the parties, there is a supplementary list of trade marks which have been involved in litigation. There is also a list in the appendix setting forth the word marks appearing in the decided cases and the book contains supplementary lists of words held to be descriptive, others which have been found to be distinctive, and comparative lists of trade marks involved in infringement actions. While every case must be dealt with on its own facts, these handy references will be found most useful in advising as to the registrability of trade marks and the possibility of conflict with trade marks in use.

Throughout the book, the Canadian cases are set out in bold type so that our own decisions can be readily selected, when desired.

The greater portion of the book is devoted to the law of trade marks. There is, however, a chapter on industrial designs. Our legislation on the subject is embodied in the old Trade Marks and Designs Act, which was repealed insofar as it affected trade marks, when the Unfair Competition Act was passed in 1932. Unfortunately, however, Parliament has not yet seen fit to give our industrial design laws a much-needed revision. These laws have not been used to any large extent in Canada and very little can be said about them, except by way of criticism. The author has, however, dealt with the subject as fully as possible in view of the state of our Act and the few decisions which have been given thereunder.

The index to the book is equally as complete as the rest of the work. The appendix also contains all statutory material necessary for a full consideration of the subject. It not only contains all of the Acts to which reference has been made but reference is also made to the special emergency orders and regulations passed because of the existence of a state of war.

The author has obviously spent many months of his time in completing this work. The result is an outstanding contribution to Canadian legal literature for which the profession should be deeply indebted to the author.

E. GORDON GOWLING.

Ottawa.

Studies in the Adequacy of the Constitution. By JAMES BARCLAY SMITH. Los Angeles : Parker & Baird Co. 1939. Pp. xvi, 360. ($3.50)

Professor Smith states in his preface : "We are organized upon the fundamental assumption of competitive industrial enterprise and a politics of individual liberty to acquire property, and freely engage in business, and to exercise personal judgment in the choice of business conduct. It is with this that these studies are separately conducted and from it that a common core emanates." Most of the material which comprises the studies has already appeared in various American legal periodicals but because these are not readily accessible to Canadian students it is a distinct advantage to have it available in a single book.

The great portion of the book is concerned with the role of the government in its regulation of and participation in industrial life, and the extent to which constitutional limitations preserve the individual's rights of liberty and property. The accretions to Congressional power through the use of the "commerce clause" are in sharp contrast to the position of the Canadian Parliament in relation to its power in respect of "trade and commerce". In emphasizing the role of judicial review of legislative and administrative action the author is on ground which is more or less familiar to the Canadian lawyer; although the degree of review in this country, in theory at least, is less by reason of the fact that no bill of rights stands in the way of legislative invasions of individual interests. In the United States, as in Canada, legislative policy is a matter solely for the legislature when it acts within the ambit of its constitutional grant of authority but there, as here, (and cases need not be cited) the courts have not infrequently assumed to pass on the wisdom of the legislature's choice.

The author's attitude towards the constitution in relation to the scope it offers for realizing to the full public needs is reminiscent of Mr. W. F. O'Connor's Report to the Senate on the B.N.A. Act. Both find the respective constitutions of the United States and Canada adequate to modern requirements, *if properly interpreted,* as well as in keeping with the intentions of the framers. Professor Smith is very anxious, however, for the maintenance of the American plan of representative government, and he does not find this in compatible with the adequacy of the constitution in practice.

There seems to be some uncertainty disclosed in the book as to the meaning of law. In the preface the author says that "law in a general sense is the sum of those standards of human conduct recognized and enforced by societal action." Later, he defines law as the "will of the sovereign" (p. 242); a few pages further on "law is but the sum of the standards of social control" (p. 246); and again, "rules of law are nothing more than standards or lines of direction of human activity under the authority of the state" (p. 252). Perhaps these are different ways of saying the same thing.

This book is another manifestation of the extent to which we in Canada are, comparatively, wanting in any widespread efforts to subject our constitutional decisions to close scrutiny. The "living tree" doctrine of *Edwards* v. *A.-G. for Canada,* [1930] A.C. 124, would have more chance of becoming a reality in constitutional interpretation if the members of the legal profession applied to the decisions a critique which went beyond the recitation of passages from the judgments of the Privy Council.

Toronto. BORA LASKIN.