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Book Review: The Evolution of the Judicial Process, by The Hon. J. C. McRuer

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The Evolution of the Judicial Process. By THE HON. J. C. MCRUER, Chief Justice of the High Court of Justice, Ontario. The W. M. Martin Lectures. With an introduction by DEAN F. O. CRONKITE. Toronto: Clarke, Irwin Company Limited. 1957. Pp. xi, 115.

The Evolution of the Judicial Process presents in book form three lectures given in 1957 by the Honourable J. C. McRuer, Chief Justice of the High Court of Ontario, in the W. M. Martin Lecture series, inaugurated in 1956 at the University of Saskatchewan under the auspices of the Law Society of Saskatchewan. The lectures perpetuate the name of the Honourable W. M. Martin, the distinguished Chief Justice of Saskatchewan since 1941, and a Justice of Appeal of Saskatchewan since 1922. There is a pleasing foreword by Dean F. C. Cronkite, Chairman of the W. M. Martin Lectureship Committee.

The first lecture briefly covers the history of the judicial process from the origins of law to the Code of Hammurabi and the Mosaic Law some 800 years later. Reference is also made to the Babylonian Code, the Hindu Code of Manu and the development of law through the Christian ages in England prior to the Norman Conquest. The development of the Curia Regis, the origin of the Courts of Common Law and the Court of Chancery and their evolution through to the Judicature Acts of 1873-5 are more fully covered.

The broad scope of the lectures permits only limited attention. However, it is interesting to note the reference to Bacon's address to the Judges in 1617, reminding them of their duty that, in visitations about the Kingdom, they should represent to the people the graces and cares of the King and, upon their return to London, present to the King the distastes and griefs of the people. Of this the learned author says:

> We still have a dim reflection of these duties as outlined by Bacon in the provisions of the Judicature Act of Ontario requiring the judges of the Supreme Court of Ontario to sit in council *once a year* for the purpose of "considering the operation of the (Judicature) Act and of the rules and the working of the offices and arrangements relative to the duties of the officers of the court, and of enquiring and examining into any defects which may appear to exist in the system of procedure or the administration of justice in the Supreme Court or in any other court or by any other authority" and to "report to the Lieutenant-Governor what amendments or alterations, if any, it would be expedient to make in this Act or otherwise relating to the administration of justice, and what other provisions, if any, it would be expedient to make for the better administration of justice."

The second lecture describes contemporary judicial processes in France, Russia, the United States, China, Belgium, Holland, Denmark, Scandinavia, Germany, Austria and Spain, with particular attention to the judicial systems in France and the United States. (Japan does not seem to have been referred to; I met the cultured and widely travelled Chief Justice of Japan several years ago). The learned author states that in doing this he had three purposes in mind: first, to stimulate interest in enquiring minds and to give incentive for further study; second, to provide a background against which to appraise

objectively the strength and weaknesses of our own system; and, third, to introduce the third lecture on the development of an international judicial process.

In the second lecture the thought is thrown out that it will be a matter to be decided in the future whether the Supreme Court of Canada will develop as a Court exercising the functions of the House of Lords, the *Cour de Cassation* of France or the Supreme Court of the United States. It is noted that if the population of Canada doubles, the Court as now constituted will not be able to function as it does today if it is called upon to exercise its present broad jurisdiction.

In the necessarily general comparisons of the judicial processes in various countries, the learned author states that there are characteristics of the Continental systems that students of legal procedure should study. He emphasizes that the objectives of the complex systems of France, Germany, and other European countries, are to bring justice closer to the common man, and to bring to the case in the first instance the combined wisdom of at least three legally trained minds. Thus, the learned author notes:

> We know that under our system justice is too often beyond the financial reach of the common man. That this is wrong cannot be denied. That it will be corrected is certain. That is should be corrected by the legal profession and not in spite of the legal profession is of paramount importance.

The third lecture, devoted to the international judicial process, gives an interesting general review of some efforts at arbitration between national states, and the attempts to bring into being a law of nations based on usages which civilized states have sought to observe in their dealings with one another. The learned author notes that the release of nuclear energy has destroyed the time-tested theory of balance of power based upon manpower, industry and wealth, and he advances a strong plea for the institution of a system of international courts capable of settling international differences by the processes of law rather than by a resort to arms and scientific weapons of destruction.

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