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BOOK REVIEWS

ADMINISTRATION OF JUSTICE IN LATIN AMERICA. By Helen L. Clagett. New York: Oceana Publications. 1952. Pp. VIII, 160. $5.00.

Mrs. Helen L. Clagett, Chief of the Latin American Law Section of the Law Library of the Library of Congress and a member of the California bar, has made available to the bench and bar a broad general survey on the administration of justice in Latin America. She has written this book in the hope that it will fill the particular need for a single volume designed to give the lawyer, steeped in the traditions of the common law, a basic orientation in the judicial systems of all the Latin American nations. The author states that it is possible to present a regional coverage of the judicial systems of the Latin American nations since the systems for the administration of justice in those countries are sufficiently uniform in organization and fundamental principles to make possible a systematic treatment in one volume.[1]

Fully aware of the political upheavals and other difficulties in some of the Latin American countries, Mrs. Clagett states that "political angles and considerations have been sidestepped altogether in this work."[2] She states that "Only written law and decrees have been taken into consideration, and no comments made on whether or not these have ever been flouted or to what extent they may have been ignored in practice."[3]

The book, written in clear and simple language easily understandable even by the layman, contains seven chapters. Chapter I, entitled "Relation of the Judicial to other Powers of Government," forms the general introductory orientation as to the governmental structure of most of the Latin American countries. It is interesting to observe that the written constitutions of the Latin American countries provide for a balance and separation of governmental powers, and adhere to the classical tripartite division of governmental powers. Although the majority of the countries are constitutionally "unitary republics," four nations, Argentina, Brazil, Mexico and Venezuela, have adopted a federal representative form of government, with the resulting dual system of courts.

Chapter II, entitled "Judicial Systems," contains a general discussion of the various courts presently in existence with the name of the highest court of each country and a general discussion of the judicial structure, including the number of judges, their method of appointment and their tenure of office.

Chapter III, entitled "Jurisdiction," describes the jurisdiction of courts in those countries having a federal system. In these countries litigation involving persons or subject matter relative to international affairs and actions arising between the territorial divisions of the nation comes within the original jurisdiction of the highest court of the land.[4]

Chapter IV, which deals with "Special Courts and Jurisdiction," is of particular interest because it deals with such important matters as the administration of labor law, military justice, electoral law and the entire administrative process. In many of the South American countries, justice in these fields is administered by autonomous or special courts or by specialized procedures in the ordinary courts of justice. In other countries, matters of juvenile delinquency, taxation and customs are assigned

1. Preface, p. VI.
2. Preface, p. VII.
3. Ibid.
4. P. 42.

to special bodies. In this chapter the reader will notice the Latin American counterpart of the American administrative litigation (*lo contencioso-administrativo*). It is noticed that in Venezuela a *Tribunal Disciplinario* exists, composed of five members of the bar association, whose function is to hear cases against lawyers for offenses committed by them against judges and other lawyers, or any other matter involving illegal or unprofessional conduct.

Under the various headings, such as military justice, labor courts, electoral courts and juvenile courts, the author gives a terse country by country breakdown, indicating, on a comparative basis, some of the special features of these courts. The juvenile courts are of particular interest since they are based upon the concept that the youthful offender should be given special treatment as a victim of circumstances rather than to be treated as a criminal. These courts do not administer punishment, but rather their decisions usually dictate special protective measures and provide for the care of the child following the trial. In Argentina, for example, parents found to be at fault may be included within the court's jurisdiction and may be liable to punishment for an act of neglect or other offenses. In Colombia, in addition to a judge, the court is composed of two alternate judges, a physician specially trained in psychiatry, a court attorney to defend the offender, a statistician and at least two probation officers with special training in social service.[5]

Chapter V, dealing with "Jury Trials," indicates that, although practically all the constitutions of the Latin American republics mention juries in connection with criminal actions, "No evidence has been found that jury trials have ever been used in civil cases and in a number of countries the use of juries is restricted to libel cases only."[6] Is is clear that in these republics the institution of the jury has an unimportant status when compared to the important part that it plays in the administration of justice in the common-law world.

In Chapter VI the student of the common law, whose legal education is founded upon the study of cases and the doctrine of stare decisis, will be introduced to the civil law counterpart of that doctrine—*jurisprudencia*. Since Latin American countries follow the heritage of the civil law, they do not adhere to the doctrine of stare decisis. Nevertheless, the author states that "A growing tendency has been noted in a number of the larger American republics to recognize precedent of a sort, particularly when formulated through a long course of decisions and as enunciated by the highest court of the land."[7]

Chapter VII, entitled "Judicial Guardianship of the Constitution," discusses several of the remedial devices used to test the legality of governmental action. The author refers to various methods that have come into being to protect constitutionally guaranteed rights and freedoms and to test the constitutionality of legislation. For example, a number of countries permit a suit to be brought by a group of persons, although no one of them has been injured by a specific law, and in a so-called "popular action" can demand that the Supreme Court pass upon the constitutionality of particular legislation. It is in this chapter that the author treats the Mexican *amparo* remedy. Although the word *"amparo"* literally means protection, favor or assistance, it is apparently an extraordinary remedy partaking in some respects of the common law prerogative writs and the injunction.

Mrs. Clagett's book on the "Administration of Justice in Latin America," although

5. P. 111.
6. P. 116.
7. P. 125.

by no means a definitive work, is nevertheless an important monograph. It doubtlessly will earn a place in the introductory literature of comparative law. It is hoped that it is merely the forerunner of other works on Latin American law and that many of the concepts and institutions that are dealt with generally in Mrs. Clagett's book will be treated in greater detail. Although Mrs. Clagett does not discuss and compare with the common law specific rules and principles of law, such as principles of torts, equity, trusts, property, etc., such as is done in Mr. Eder's excellent book on "Anglo-American and Latin-American Law,"[8] Mrs. Clagett's book supplies a broad panorama which will be an invaluable aid to those contemplating the further study of Latin American law. Many of the institutions and concepts referred to surely excite the imagination. In this connection the reader will appreciate the selective bibliography which is found in the back of the book.

Perhaps the accurate reason why the "Administration of Justice in Latin America" is destined to become an important contribution is found in the author's "Preface" where she states: "Long an enthusiast on harmonious inter-American relations and hemispheric solidarity as cures for some of our present ills and guarantee against future ones, the author believes implicitly that a basic step toward such an end is mutual knowledge and understanding of each other's legal systems."[9] There can be no doubt that in a shrinking world the legal systems of our Latin American neighbors can no longer remain "foreign." Since a basic understanding of these systems is today indeed helpful, if not absolutely necessary, common law lawyers and judges owe a debt of gratitude to Mrs. Clagett for having written this introductory volume that will play its part in the attainment of this understanding.

EDWARD D. RET†

ADVANCE TO BARBARISM. By F. J. P. Veale. Appleton, Wisconsin: C. C. Nelson Publishing Co., 1953. Pp. 305. $4.50.

That we are advancing toward barbarism seems well documented by the history of man's increasing inhumanity to man, as the twentieth century unfolds the sorry pattern of disturbing events. This advance toward barbarism is not negated by the fact that in science and technology we have gone forward to undreamed of conquests in the period of the last fifty years. Indeed, the advance toward barbarism is accelerated by our science and technology. After all, science and technology are neutral instrumentalities, as available to the Hitlers, the Stalins, the Malenkovs, and the Mao Tse Tungs as to the most enlightened, ethically sound, or even Christian, leader of our time. Indeed, behind the façade of all gaudy modernism lie the same lusts and sins which have desolated the lives of men from the most ancient times. The soul is still the main battle ground and what happens exteriorly is just a function of what goes on in our dull or sensitive consciences. That we have increased the destructiveness of bombs to unimaginable extents, that some men have degraded the human person by calculated, psychological tortures so as to render naive the simple cruelties of Assurbanipl or Genghis Khan. These are signs that we have perverted science and corrupted civilization by our sins. We have more to fear from the educated barbarian than from the ignorant one. Barbarians become exceedingly

8. Eder, Anglo-American and Latin American Law (1950).

9. Preface, p. VII.

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formidable when they clutch the hydrogen bomb. Barbarism is not something that one produces or restrains in a scientific laboratory or even in national or international councils of politicians or sociologists. Barbarism comes from the psyche of man. If the soul is the empire of civilization, it must also ever remain the empire of barbarism.

To be reminded of our steady modern advance toward barbarism must be disconcerting to those few remaining spokesmen for the automatic progress of homo sapiens. Nazi and Communist slave labor camps are scarcely a credible advertisement for evolutionary progress. History is many things, but it is not a wide avenue down which men walk forever forward. There are too many detours of sin and error.

This book is interesting but at times provoking rather than provocative. It renders a service to neglected truth by pointing out the current decadence, in theory and practice, of previously long-standing ideas on the question of "civilized warfare". But it seems unwilling to grant that the period of "civilized warfare" owed anything to Christian religion or ethics. It is incisive in its criticism of the Nürnberg trials which are examined not always in detail but often very justly.

The author's occasional capacity for unjust appraisal appears nowhere more strikingly than in the following absurd disposition of the case of St. Joan of Arc:

> "Charles I thus owes much of the sympathy with which he has come to be regarded by posterity to his shameful trial and death by violence. An even more famous political trial has had precisely the same result; the exact opposite, of course, to that intended. If the English had quietly strangled Joan of Arc in her cell and then announced she had been killed while trying to escape—a procedure as common in the fifteenth century as during the Black-and-Tan Terror in Ireland, in 1920—she would now be remembered merely as a peasant girl to whom popular report attributed a prominent part in the relief of Orleans, in 1429, by the French, itself a mere episode in an interminable civil war which had then been raging with varying fortune for nearly a century. Nothing would have survived concerning her personal character, and her achievements would soon have probably been dismissed as mainly legendary. . . .
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> "Not her actual achievements but the decision of the English Government to bring about her death in a strictly legal, orderly, and public manner established the fame of Joan of Arc, enriched the history of the Middle Ages with their most picturesque figure, gave France a national heroine, and ultimately added her name to the calendar of the saints."[1]

After quoting Jacques Novicow's estimate that during the last three thousand years, there have been thirteen years of war to one of peace, the author proceeds to a brusque summary of warfare and its mores from the period of "primeval simplicity" through Europe's horrible religious and civil wars following the so-called Reformation. This great span of time is covered in 58 pages. Such limitation of space scarcely does justice to so grandiose a subject matter. Then, the author describes the two phases of what he calls "civilized warfare". It seems to me that at this point, the book begins to pick up interest that somewhat lagged in the prior pages.

However, the most engrossing portions of this book are devoted to episodes of the last World War which scarcely do honor to the Allied cause. Veale refers to "the promiscuous looting of public and private property as provided by the Potsdam Agreement of 1945"; to "dishonest verbiage like the Atlantic Charter"; to the mass expulsion of from thirteen to fifteen million people from Central Europe (Sudetenland, Silesia and Pomerania), in the course of which four or five million people died—a mass expulsion instigated by the Kremlin and approved at Potsdam to our eternal disgrace.

He roundly condemns the bombing of Dresden in February of 1945, when the city was glutted with almost a million refugees fleeing before the Russian advance (most

1. Pp. 193-195, Passim.

of them women and children) when about 1800 American planes bombed the city, causing the death of about a quarter million people who were largely non-combatants. He attributes to English planning the first program of non-combatant bombing to induce collapse of civilian morale citing as his authorities Spaight and Air Marshal Harris.

Regardless of who started recourse to civilian bombing (the author claims the Germans did not), when the Germans in massed squadrons, bombed Coventry and similar English cities, Roosevelt and Churchill spoke in eloquent language of the inhumanity of the thing. When we bombed Hamburg, Dresden and other German cities to obliteration, the previously deprecated inhumanity was forgotten. When the Germans reciprocated by developing the buzz bomb and similar means of promiscuous attack, again the allied leaders raised the cry of uncivilized warfare. This cry subsided appreciably when we used the atom bomb on Hiroshima and Nagasaki. Is an author not justified in accounting such episodes of matched callousness and sensitivity to human values no matter who engineered them, as stages in the advance to barbarism?

Nothing gains more sustained condemnation from the author than the Nürnberg trials. He is outraged by a number of fairly indefensible aspects of those trials. He refers, in the first place, to the fact that the prisoners were punished for crimes *ex post facto*. This, he asserts, runs counter to the entire Anglo-Saxon and American tradition of jurisprudence. He resents the fact that some of the judges on the Nürnberg bench should have been occupants of the dock. He thinks it is a blemish on the record of English justice that the Katyn Forest murders of some fifteen thousand Polish officers by the Russians were never carefully investigated during the trial. He is shocked by the condemnation of Admiral Raeder whose occupation of Norway was the execution by the Nazis of a plan precisely similar to the one which the British devised and attempted to execute in an abortive operation at Narvik, called "operation Strafford". He examines with caustic criticism the trial of generals like Kesselring and Keitel. He feels that unrestricted submarine warfare as charged against Admiral Dönitz, was exactly similar to what had gone on by order of the British Admiralty in the Skagerrak.

In many respects this is a bitter book. Sometimes, I think, it is imprudent and one-sided. But there are very large elements of truth here which ought to be called to our attention, if for no other reason than to destroy our smugness and some of our illusions of unsullied sanctity.

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