

June 1928

The Business of the Supreme Court

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Recommended Citation

T. W. Arnold, *The Business of the Supreme Court*, 34 W. Va. L. Rev. (1928).

Available at: <https://researchrepository.wvu.edu/wvlr/vol34/iss4/22>

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needs no remarks as to binding, printing or general design. The book is probably intended to furnish material for a course of as much as four semester hours, and there seems abundant material for such a course. Where less time is devoted to the subject the instructor will find he can readily make omissions which will leave material suitable to his needs. The book should meet with general approval.

—JAMES W. SIMONTON.

THE BUSINESS OF THE SUPREME COURT. A Study of the Judicial System. By Felix Frankfurter and James M. Landis. New York: The Macmillan Company. pp. viii, 349. (1927).

The business of the Supreme Court has ceased to be a settlement of litigation between private individuals. Originally the activities of the court were concerned predominantly with common law topics and federal specialties, like admiralty, bankruptcy, patents and claims against the government. Today, it is pointed out by the authors of this work, the common law controversies in the Supreme Court are in process of atrophy. In the 1925 term of court there were only eleven of such cases. In the 1875 term 81, representing the shrinkage of 43% to 5%. The judiciary act of 1925 was passed to relieve the court of these sources of jurisdiction. Resort to the Supreme Court in cases involving ordinary common law or statutory issues were shut off by the Act of 1925, which made decisions of circuit courts of appeals final on such issues.

The authors point out that in the future the effects of the Act of 1925 will become more and more apparent. Private litigation in this tribunal is practically disappearing. The Supreme Court has ceased to be a common law court. It has become instead "the final authority in adjusting relationships of the individual in the separate states, of the individual in the United States, of the forty-eight states to one another, and of the states to the United States." In other words, the authors point out that the business of the

Supreme Court today is primarily concerned with economic social and industrial issues. In dealing with such issues the decision rests largely upon the facts of the industrial life as seen by the court. For example, conflicting opinions of the justices on activities involving trade associations are not due to any differences in their reading of the Sherman Anti-Trust Law, but are caused by the differences in the economic data which the various judges deem relevant. It is true, as the authors point out, that the members of the court are often admonished by their associates not to make their economic and social views a part of the constitution. Yet they are constantly compelled to invoke vague phrases like "liberty," "property," "regulation of commerce among the several states" and "due process of law." In the authors' view, therefore, it is impossible to lay down decisions under these formulae without translating their conceptions of economic and social policy into their decisions. As long as federalism endures the Supreme Court will be concerned with political problems and with conflicts of economic forces. To the ordinary training of the lawyer the Supreme Court justice may have "wisdom in political judgment and talent for industrial statesmanship." The ideas above outlined are found in the very excellent final chapter of this book.

To understand the business of the Supreme Court and its change from a common law court to a tribunal of political and economic adjustment, it is necessary to understand the entire federal judicial system, its history and its organization. The book therefore starts out with a complete historical review of the federal judicial system. The authors consider that there are three principal periods of development. First, from the organization of the federal system to the Civil War. Second, from the Civil War to the creation of the intermediate courts of appeal in 1891, and third, from the change of the circuit court of appeals act to the present time.

Chapter eight discusses the Judiciary Act of 1925 which was made necessary due to the post-war increase in the volume of cases coming to the Supreme Court. In this act Congress gave the court what it wanted, a very strictly confined jurisdiction. Cases now come to the Supreme

Court from three sources, the district court, the circuit court of appeals and the state courts, but even from these courts only a limited classification is reviewed. The future alone will prove or disprove the wisdom of this act. There is of course a risk that review will be denied when it should be granted. The authors however believe that the jurisdiction of the court should be even further limited to federal questions presented in the record so that the court's energy need not be expended in deciding issues not pertinent to its function.

The authors also believe that the Supreme Court ought not be asked to pass on questions of fact. They are charged with "keeping our constitutional system in equilibrium" and should not be compelled to "disentangle confused testimony." "It surely ought to be possible to devise rules of appellate practice whereby the Supreme Court will be relieved from quarrying the facts out of a confused mass of evidence."

The book is written with the clear and forceful style which distinguishes all of Mr. Frankfurter's writing. It is exceedingly scholarly in its treatment and the footnotes are very extensive. It should be of interest to not only any lawyer practicing in the federal courts but to any student of constitutional history.

—T. W. ARNOLD.

THE ELEMENTS OF CRIME. By Boris Brasol. St. Petersburg Imperial University, Russia. Former prosecuting attorney of the St. Petersburg Supreme Court. New York: Oxford University Press, American Branch. pp. xvii, 433 (1927).

What are the causes of crime? Are they removable? These two questions have been answered in various ways. The legal point of view emphasizes the importance of procedure and punishment. The sociologist believes that economic factors, and especially poverty, are the chief contributing factors. The psychologist believes that deficient