

POSTS/11/1) The Need for Responsibility in Administering Justice

Reports of the American Bar's euphoria about the adaptation of the American judicial system to that of Great Britain are heartening. They are heartening because American lawyers have done little as a group to improve the administration of criminal justice in this country. At the same time, that euphoria is largely dependent upon an ignorance of the basic differences between the English system and ours, differences that are not subject to cure by legislation.

First, it ought to be noted that, for all the controversy between the Scots, the Welsh, and the English, Great Britain is essentially a homogeneous population. Ours is not; the melting pot has not done its job, nor has racial bias been destroyed. Second, the British have a centralized government, with an executive responsible to parliament. We have the vestiges of a federal system and our executive is independent of Congress. Third, we have an extraordinary amount of litigation. The British, for all their remnants of *Jarndyce v. Jarndyce*, are comparatively non-litigators, in part because of the high cost of litigation to the losing party. Courts in New

York City alone have more business than all the courts in England.

Fourth, the British have proved able to use a layman dominated justice of the peace system; our JP systems have proved scandalous over and over again. Fifth, we have a written constitution that constricts powers of change here in a way foreign to the British Isles. The jury cannot be abolished in civil cases by legislative mandate; the jury, I think, cannot be reduced to plurality votes in criminal cases without violating the constitutional protections that were intended to be afforded by the Sixth Amendment. The exclusionary rule appended to the Fourth, Fifth, and Sixth Amendments by the Supreme Court is not likely to be replaced except by constitutional amendment which is not likely to be adopted.

Even if all these barriers were absent, however, there is a more fundamental reason why the British system is not likely to be brought home with the returning sojourners. What we need to imitate is the professionalization of the English judicial process, starting with the judiciary itself. Most of our judges are appointed or elected not because of their capacities to perform the judicial

role well but because of their services to the dominant political party. The result is that, with good cause, we do not trust our judges and are not prepared to dispense with the jury system and its procedures because they afford protection against an incompetent and corrupt judiciary.

We need to professionalize our bar, so that its ethical standards conform to those that would be expected of officers of a court rather than simply hired hands. We need to professionalize our police, so that lawlessness rampant among them is dissipated without the need for judicial controls on their behavior.

In sum, we must restore responsibility in the administration of justice. Then, and only then, will it be time to speak about the adoption of the rules that govern the English system for our own use. In Mr. Justice Frankfurter's words: "Fit legislation and fair adjudication are attainable. The ultimate reliance of society for the proper fulfillment of both of these august functions is to entrust them only to those who are equal to their demands."

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