

## Book Review: English Law and its Background, by C.H.S. Fifoot

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*English Law and its Background*, By C. H. S. Fifoot, Barrister-at-Law, Fellow of Hertford College, and Lecturer in Law at the University of Oxford. 1932. One volume. G. Bell and Sons, Ltd., London.

The writer of this review feels that he cannot be critical about Mr. Fifoot's book. He likes it too well to be able to discover any shortcomings in the author's style, plan or statement. Perhaps the most enlightening comment that he can make about it is that the author does not purport to define "the law," he explains it by describing the judicial process much as Cardozo does in *The Nature of the Judicial Process*, or Llewellyn in *The Bramble Bush*.

Any number of writers have criticized the old and popular platitude that ours is a government by law but not a government by men. These writers have shown how the courts during the course of centuries have been adapting this vague thing, the judicial process, laboriously, perhaps, and often with the aid of the legislatures, but with some more or less creative intuition, and under the pressure of conscience, to meet ever new and changing social demands. That is the thesis of Mr. Fifoot's book. "A judge," he says "has to balance conflicting rights, to weigh the profits of the individual against the interest of the state, to interpret canons of morality, to apply, in short, his own version of public policy." The author does not advance any particularly startling analyses of any very difficult problems, but he has illustrated his thesis with an excellent statement of the historical development of the common law that is concise and readable and complete.

This historical discussion covers those periods in English history when the courts had particularly to solve new groups of problems. The author begins, of course, with the early Middle Ages when the courts were laying the foundations for the judicial process as we have come to use it. He traces the development through the later Middle Ages, the Tudor-Stuart period, The Eighteenth Century, with its new problems of commercial law, the Nineteenth Century, with all the complications following the industrial changes of the "Industrial Revolution," and finally he brings the story down through the present century during which the courts have had to recognize among other factors, the growing importance of administrative regulations and bureaucratic control. All of this discussion is enlightening, some of it particularly as background study for our own American Common Law, and much of it for comparative study of the developments in England with the progress and changes that are being effected by our own courts.

The book is an excellent reference work for any introductory course in law school. It should prove enlightening to anyone interested in the study of the law as a study in social science. And the very practical lawyer may also find it interesting because it will show him that the courts have been acting for centuries just as they seem to him to be acting today, arbitrarily, sometimes, and according to their own ideas of social justice, but nevertheless with great respect for tradition.

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