his brothers have frequently so sinned. Are we to mistake the means for the end, and thus misuse the pragmatist test, as William James himself has done? Are we to confuse, after all, those "critically thought out" social judgments as to balancing of interests with prejudiced and biggotted dogmas as to means or instruments, which are eternally obstructing the progress of science and the scientific solution of human problems? If this is what we are to understand by the higher law, it is permissible to submit that there is more than a mere resemblance in name between it and that "higher law" which for centuries obstructed the very adjustments which Judge Cardozo so confidently and justly commends.

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THE BUSINESS OF THE SUPREME COURT. By Felix Frankfurter and James M. Landis. New York: The MacMillan Co. 1928. Pp. viii, 318.

This book is avowedly an attempt to reveal the story of political and economic strife which lies hidden beneath the technicalities which govern the jurisdiction of the federal courts. It first appeared in the Harvard Law Review in serial form. The method is historical and the plan chronological. The scholarship is of the highest order and the text is illuminated with extensive notes. Infinite pains have been expended in going to original documentary sources, with a corresponding presumption of accuracy.

We are introduced first to the considerations underlying the First Judiciary Act. Elaboration is made upon the parts played by state jealousy and the fiscal necessities of the Union to enforce its own claims. It is pointed out how the act was, in fact, a compromise between conflicting economic and political interests. Incidentally, innumerable incidents of the history of the judiciary, of independent interest for lawyers, are woven into the general story—incidents interesting in themselves, but unknown to the average lawyer. For example, who knows how many judges there were under the First Judiciary Act? When did Congress first start its tiresome and endless series of "investigations"? What were the arguments for and against the system of circuit riding? Why has reform of the federal judiciary occurred only after the need therefor has become unbearable? Who and what were the "midnight judges"? Has the supreme court ever consisted of more than nine members? How many miles would a justice travel in a year doing circuit court work? And so on.

From the Civil War to the Circuit Court of Appeals Act, more and more is it shown how "the history of the federal courts is woven into the history of the times." The economics of the period immediately following the war were reflected in the litigation of the supreme court. It forceably appears that the history of the federal courts is a living part of our national life. Great commercial activity and development, panics, land booms, railroad building, cannot but produce vast litigation. Again, the political and economic implications of the Fourteenth Amendment gave complexion to supreme court business. The movement toward nationalization was significant. We were now a nation, with a nation's litigation. Not the least significant phase of this period of supreme court history was the impossibility of relief for the congestion of judicial business by reason of the inability of Congress and the executive to cooperate regarding relief measures, due, of course, to the burning

economic and sectional issues of the times. The federal courts, as the focal point of national power, might well engage the attacks of an embittered South and an agrarian West, struggling to command a hearing in the nation's political forum.

The Circuit Court of Appeals Act (1891), while retaining the wornout system of circuit courts, marked the first structural change in the federal judiciary in a hundred years. But events demonstrated that, irrespective of structure, supreme court business was pretty largely determined by the dominant interests and developments of contemporary life. When the modern commercial and industrial regime got well under way, "Big Business" had to run the gauntlet of constitutional limitations and legislative control and regulation. Modern social legislation, too, had to be fitted into the due process fabric, after a long and arduous tinkering with the textiles. Thus the nation's life is mirrored in the work of the courts. Society's reaction to defective judicial machinery is noteworthy, too, when the defects become alarming in a concrete way. Accordingly, witness the indignation over the wide latitude of district court powers respecting the constitutionality of federal criminal legislation, as exemplified by the notorious "Beef Trust" decision in Chicago—a dangerous situation when "Big Business" becomes the defendant in criminal actions.

Not the least instructive chapter of the book is that one dealing with federal courts of specialized jurisdiction, indicating the turn of the times in requiring tribunals with specialized knowledge and a specialized technique to deal with highly technical litigation.

In the chapter covering the period from the judicial code to the post war judiciary acts, the authors again show how general dissatisfaction aroused by the Ives case, invalidating the New York Workmen's Compensation Act, was mainly responsible for altering the jurisdiction of the supreme court to allow reviews from the state courts even where a federal right had been upheld. For the most part, however, the efforts of those interested in reform of the judiciary were directed toward the cutting down of sources of appellate work. This was accomplished by confining review of many types of cases to *certiorari*.

Recent reform movements are characterized by the general nature of the problems as opposed to problems growing out of our peculiar experience and environment. This reflects a certain maturity in political and judicial organization. Government is now recognized as a science with certain standards of efficiency. Thus, the conference of senior circuit judges has indicated a movement for a unified and scientifically organized machinery, and may be said to be the first conscious effort to put the federal judiciary upon a thoroughly sound business basis. The implications of this movement, together with related questions, are familiar to members of the bar in almost any state in the Union.

The Judiciary Act of 1925, proposed and drafted by the supreme court, is credited largely to the persistent efforts of the chief justice. The circuit court of appeals, now thoroughly entrenched in the confidence of the profession, has offered an instrumentality by which to cut off vast quantities of litigation which theretofor had found its way to the supreme court docket. Accordingly most appeals from the circuit court of appeals have been made discretionary, with but few cases directly appealable from the district courts to the supreme court. Writs of error to the state courts, too, have been greatly cut down.

In such manner the authors of this valuable book follow the business of the supreme court to the point where common law questions have become almost extinct in its work. The court has evolved until it is almost exclusively a public law tribunal. Questions involving some nation-wide issue or some question of general public interest and policy limit its activity. Inevitably, there thus arises a demand for the handling of problems involving much more than mere law. Such demands require a tribunal possessed of not only legal knowledge, but statesmanship, a critical tolerance of divergent views of policy, and, above all, a capacity to comprehend the significance of the wide and varied range of economic and sociological problems which are more than ever constituting the basis of our public law. The future of the supreme court and its business will depend pretty much upon how well these requirements are met.

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THE LEGAL EFFECTS OF RECOGNITION IN INTERNATIONAL LAW. By John G. Hervey. Philadelphia: University of Pennsylvania: University of Pennsylvania Press, 1928. Pp. xiv, 170.

This study of the legal effects of recognition as determined chiefly by the federal and state courts is an able contribution, and the more welcome because of the dearth of literature on the subject. The most important chapters deal with recognition by political departments, juristic status of unrecognized governments, retroactive effect of recognition, recognition and legal capacity, and extraterritorial operation of acts of recognized and unrecognized governments.

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