THE MACHINERY OF JUSTICE IN ENGLAND

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PREFACE TO THE FOURTH EDITION

Since the last edition of this book there have been several important changes in law and practice. To incorporate the new material and bring the account up to date I have substantially revised the text, with a fair amount of rewriting and some re-arrangement. The principal new legal provisions cover a wide field. Contempt of court and *habeas corpus* proceedings have been altered by legislation and I have added a new section on each of these matters: a new Table X is included to show the provision for appeals in cases of contempt. The section on courts with appellate criminal jurisdiction has needed heavy revision because of the Administration of Justice Act 1960, and Table V giving the system of criminal courts has been redrawn to show the new rights of appeal. There has been an increase of interest in the nature of a trial at common law, and I have added a section to Chapter 1 to bring some material together and relate it to the principle of open court and the position of the press. Legal aid has been made more widely available. In criminal cases the facilities appear more as a patchwork than a unified service, and I have included a new Table VI to show the arrangements for legal aid. The Ingleby Committee Report on Children and Young Persons has led to much discussion of juvenile courts and the services relating to families and children. Some changes have been made by legislation. It is difficult to appreciate the whole range of sentences and orders that a court may make in respect of offenders of various ages, and I drew a diagram that the Ingleby Committee found useful; it has been brought up to date and appears here as Table VIII. I have given a brief summary in the section on juvenile courts of some of the main questions and present views. The Streatfield Committee has reported on the organisation of the higher criminal courts and legislation has followed. Reorganised courts of Quarter Sessions and a revised arrangement of Assize Courts have come about, but the Streatfeild Committee also dealt with the method of providing courts with information about offenders, and that led to a review of the process of sentencing. The last of these major changes to be specially noted is that the Law Society has made great alterations in the examinations and training for becoming a solicitor. The account of these, and of many lesser changes, has been brought down to October 1963, with an indication that 1964 is expected to see a reorganisation of courts in Greater London, some powers to order re-trials in criminal cases,

and some relief for unassisted litigants who succeed in legal combat against legally assisted plaintiffs.

A most difficult matter is to assess the general progress that has been made in bringing the administration of law nearer to the needs of the present day. In the realm of special tribunals and inquiries leading to decisions of ministers on acquisition of land, planning and similar matters, the legal empire has been greatly extended. I have rewritten much of Chapter VI to give what I feel to be a better description of the arguments and tendencies. Lawyers have succeeded in getting a large measure of 'judicialisation' of these processes, and they are pleased with what they have achieved. Whether the community has gained or lost is another question. One may have a distaste for the proselytising lawyer, whose arrogance about Whitehall and Townhall has little relation to the facts of life, or one may think he is a fine fellow who battles for freedom and justice, but the major point is whether the processes are in fact reasonably fair and reasonably quick. My finding is that any gains the lawyers may have brought to these processes are far outweighed by the delays, cost and uncertainties that have grown with the extension of legal practice. Both of the main political parties recognise that England needs great works to modernise our industrial and commercial equipment, but today England is probably the most difficult country for getting anything done. Our ancestors could get parliamentary powers, acquire land, build a railway and get it into operation in a shorter time than it now takes to get authority to begin on a project. The legal system has been more successful in allowing Rachmanism to flourish than in furthering the policies of decent national development.

In the Preface to the last edition I said that 'in matters that are the special preserve of the lawyers, dust and cobwebs have settled as thickly as ever before. . . . Turn to the core of the legal world, civil actions in the superior courts, and there is a sorry spectacle. . . . The talk about justice is admirable, but when people see what is really offered, they find that it is not what they want.' There have since been two independent reports that disclose realities behind the legal facade. In 1960 a Report on Chancery Chambers and Registrars' Offices showed a state of affairs that if it had related to administration other than that of the law would have been regarded as intolerable. In 1961 a Report of the Commercial Court Users' Conference showed why the commercial community has virtually no use for the High Court. The story is the same, all along the line, that the legal processes are not good enough for modern conditions. There is far

more to this than a consumers' rebellion at being offered a poor article at a high price. The whole realm of lawyer and litigant is going through a silent revolution through the legal aid service. A vast amount of the work of the civil courts now depends on litigants being assisted persons; the defence of criminal charges is expanding, and virtually all the cost falls on public funds. An action for damages for personal injuries, with its cost and delay, its adversary handling of medical evidence, and its once-for-all lump sum for a successful plaintiff, can hardly be regarded as the best possible way to deal with these cases. The plaintiff these days is more likely than not to be an assisted person. We should not grudge him the money it costs, any more than we should complain about the medical and surgical care falling on the public purse; what we may very properly say is that the legal process should be as rational and well designed as the institutions for medical assistance.

The Lord Chancellor has referred to 'the wind of change being gently felt in the corridors of the law courts'. It is such a gentle wind that the accumulated rubbish of the law is in no danger of being blown away. The need, as great now as at any period of our history, is for the process of the superior courts to be recast and made fit for the kind of society in which we now live.

R. M. J.

CAMBRIDGE
November 1963

PREFACE TO THE FIRST EDITION

The object of this book is to explain the system of law courts and allied matters relating to the administration of justice. In the past the administration of justice has hardly been considered a 'subject'. Writers on constitutional law have included the system of the courts, but necessarily cannot give it much space; other law books are apt to assume that the reader is acquainted with the subject. Thought about law has changed a good deal in the last twenty years. The attempt to treat law as a pure science, isolated from the society it serves, is succumbing to a more sociological approach. To some extent this means that the lawyer must come down from his high perch and look at law in the light of its effects upon individuals and society. The best introduction to law is a study of the institutions and environment in which lawyers work. It is prescribed, under the title of 'The English Legal System', for the first year study in some law schools, although academic tradition has there succeeded in imposing a mass of historical study to satisfy the idea that it is cultural to know what happened in the middle ages and not cultural to know what happens in the twentieth century. My own impression, and I have been teaching this subject for some years, is that the needs of the law student and the needs of those interested in public affairs are here exactly the same—to know the present system for administering justice, how it really works, and what criticisms and suggestions have been made.

As this book is far from being an exhaustive treatise I have omitted a full documentation. References are confined to indicating further reading of a complementary nature, or to giving my sources for subjects that are not well known or statements that would otherwise appear merely dogmatic.

I give my grateful thanks to many people, including practising lawyers and teachers of law, who have helped me by discussion or by reading and criticising sections where their knowledge far exceeded mine.

R. M. J.

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February 1939