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The Criminal Court Judge

By Ernest Belfort Bax.

THE occupant of the judicial bench is as we all know, the functionary selected by the governmental "ring" to enforce or put into action the cumbersome machinery of law, which the civilized world has been compelled to invent as a feeble corrective to the results of its civilization. We have spoken of the governmental "ring," but we might more accurately describe a modern state-bureaucracy as a system of "rings" interlacing one within the other. Each "department" has its traditions carefully kept up by its staff of permanent officialdom. The "bosses" of these departments, that is, of the central or ministerial ring (and for that matter the others also), emanate, of course, from "society" as it is termed, that is, from the aristocratic and plutocratic cliques of the West End; but what is more, under our system of party government a particular ministerial post is generally the exclusive appanage of two or three individuals who take it in turns and then begin again. The appointment and regulation of the judicial bench rests respectively with the Lord Chancellor and the Home Secretary. It is true the powers of these worthies are practically limited by the "traditions" of the subordinate judicial "ring" itself (a brotherhood as jealous of its privileges and dignity as the Corporation of London, or any other mutual benefit society), but appointments, revision of sentences, and general supervision rest in the last resort with the dignitaries in question. The Lord Chancellor for the most part, appoints the judge from a successful barrister with "influential" connections.

Now, our object in thus exposing in a few words the mechanism of our constitutional government in general, and its relation to the judicial system in particular, is the better to grasp the nature of the semi-divinity which with the public at large seems to hedge a judge and all his utterances. The juryman obediently follows his directions as to the verdict he shall return, in fact, in many instances juries would seem to regard it as the sole reason of their being, to please the presiding judge and give glory to him. The public in court, and the public out of court, hang upon the pronouncement from the bench as placing beyond question the enormity of the guilt of the luckless victim (it may be) of judicial rancour. How is this reverence for the judicial fiat to be accounted for? Doubtless, to a large extent, it has its origin like the divine right of kings, and many other things, in a state of society where the judicial authority was also the religious and civil head of the community—in short, that it is one of those numerous sentiments which had a meaning once, in bygone stages of human society and intelligence, but which have survived their meaning and lapsed into superstitions. But it is, in fact, only one instance of that respect for law and order in the average mind on which the stability of the bourgeois state rests, and which masks the true character of the latter as the prop of economical rotteness.

Let us consider for a moment what judgeship involves. We have every day illustrations of the fact that the judicial "ring" presumes upon the respect accorded it, so there can be no doubt that if the people could be induced to see the judge in the light merely of an overpaid servant of the modern state, who absorbs an enormous proportion of their earnings, the better would it be for the soul's welfare of the judicial bench itself, as well as for the cause of fair play. Paradox as it may seem, it is an undoubted truth that no judge can be strictly an honest man.

The judge must necessarily be a man of inferior moral calibre. Though it is a thing one would say of no other man or body of men, yet I say unhesitatingly that a judge by the fact of his being a judge proclaims himself a creature on a lower moral level than us ordinary mortals, and this without any assumption of moral superiority above the average on our part. And why? Because the aspiring member of the bar when he accepts a judgeship knows that in so doing he deliberately pledges himself to functions which may at any moment compel him to act against his conscience and wrong another man. He deliberately pledges himself, that is, to be false to himself. He may any day have to pass sentence on one whom he believes to be innocent. He lays himself under the obligation of administering a law which he may know to be bad on any occasion when called upon, merely because it is a law. He makes this surrender of humanity and honor for what? For filthy lucre and tawdry notoriety. Now, I ask, can we conceive a more abjectly contemptible character than that which acts thus? If we want further proof of the utter degeneracy of moral tissue in such a being, let us examine the sophistries he uses in his defence, and which he endeavors on occasion to force down the throat of the recalcitrant juryman. He does not make the law, he will tell you, he merely administers it. In the same way Bill Sykes does not make his jemmy and other burglarious implements, he merely administers them. This is the sort of oil he pours on his uneasy conscience when he has one. The juryman disapproving of capital punishment objects to convicting a murderer. He is told he has nothing to do with the sentence, but only with the evidence; in other words, that the fact that the verdict he gives will have for its direct consequence a result he regards with abhorrence, is to count for nothing with him. Men who can willingly pretend—I say pretend, since it must be remembered we are dealing with men of ability and culture, capable of exposing many a subtler fallacy when it suits them—men who can pretend to accept such flimsy trash as cogent argument must surely be dead to all respect for honesty.

But the festering mass of hypocrisy of which benchdom consists is only too evident at every turn. There is, of course, the hypocrisy which is racy of the judicial soil, just as there is the hypocrisy which is racy of the clerical soil. To this belongs the professed deep reverence for the "law of England," when no one knows better than the benchman who has studied it, that well nigh one-half of English law is based on effete superstition, of which it presents in many cases the most grotesque instances—interesting and instructive from a historical point of view, doubtless, but not in themselves calculated to awaken feelings of reverence in the modern mind—and that the other half is founded on the baldest class interest and prejudice. So that all things considered there is hardly a branch of learning the pursuit of which is more calculated to inspire the average student with a contempt for its subject-matter than English law—hardly even excepting Divinity. But what is more offensive than this is the impudent assumption of moral superiority, which is one of the "properties" of the profession. Quite apart from any of the considerations just aduced, it is perfectly well known that there are among members of the English bench men of a deb—, well, men that enjoy life on its animal side,

as is, indeed, only natural, considering the amount of time and money on their hands. Yet who can orate with a richer profusion of impressively delivered platitudes drawn from the current morality than the *puisne* in addressing the prisoner, who has in ninety-nine cases out of a hundred, brought himself within reach of the law by the desire to obtain some of those very pleasures in which the judge himself revels. It is scarcely to be expected but that a man who in a "higher" grade of society so-called is capable of accepting a judgeship (with its conditions as described above) would not in a "lower," where the temptations were of a different order and much more severe, be capable of doing a little housebreaking, forgery, or even bigamy or rape. Such being the case the elimination from judicial proceedings of the "John Jacob Jackson, you have been convicted on the clearest evidence of, etc. . . . To remonstrate with such a man as you would be useless, etc., etc.," with the epilogue, "I should be failing in my duty if I did not pass a heavy sentence," etc.—the elimination, I say, then, of this somewhat stale "gag" from judicial proceedings, might possibly have a tendency to keep alive respect for law somewhat longer than bids fair otherwise to be the case.

In France even middle-class public opinion has had to assent to the abolition of the scandal of the judge's summing-up, but respect for law and order is too great in this country to allow of this instalment of justice towards accused persons. But, surely, even in this country, a muzzle might be applied to the judge after the verdict. If Parliament were to employ itself in doing this it would at least prevent unoffending citizens being sickened by the nauseous rant which on the occasion of every important trial now emanates from the whited sepulchre in wig and gown, whose function it is to administer the law.

That society which is based on property and privilege must have a criminal code as its necessary consequence we are well aware, but we none the less protest against its "administrator," the judge, being regarded in any more honorable light than its other "administrator," the hangman.

ALBERTA NOTES.

Comrade Maguire has returned to Edmonton after a tour of seven weeks among the farmers of southern and eastern Alberta. He reports holding twenty four meetings, all of which were well attended. Literature sales amounted to \$60 and sixty-two "Clarion" subs. were secured. (\$24 acknowledged in last issue).

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Edmonton local holds an economic class every Monday evening. Four or five of the comrades are stepping out on the public platform, and doing fine, more will be heard of them in the near future.

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The comrades at Camrose are figuring on starting a local there at an early date.

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The Alberta Provincial Executive Committee have a few thousand copies of "A Reply to the press lies concerning the Russian Situation," which were at one time banned. These may be had for free distribution by sending postage to Box 785, Edmonton, Alberta.

J. F. MAGUIRE.