The Criminal Prosecution in England, by SIR PATRICK DEVLIN (Oxford University Press, London, 1960), pp. 1-118. Australian Price £1. 5s.

This book provides in language easily understandable by lawyer and layman a concise statement of the current procedure in England used in prosecutions for indictable crimes, from investigation prior to arrest until the time of arraignment. It also discusses the rights and duties of the Crown and of the accused while the case for the prosecution is being prepared for trial.

The author deals historically with those institutions whose early function was to investigate crime and to commence the criminal proceedings which follow. He describes how the Grand Jury, the Coroner's Jury and the Justices of the Peace first began to function as witnesses and investigators of crimes and how, as their duties became more judicial and more formalized, their place has been taken by the various and numerous police forces throughout England. The author traces shortly the influences which operate in police investigation and in the prosecution of offenders by the police, the Director of Public Prosecutions, and other bodies. In the author's opinion the fact that a great many prosecutions are conducted by barristers who have general practices, including the defence of accused persons, and who are in close contact with the judges, serves to keep the investigation of crime within the limits of fairness and justice.

It would appear that the opinions of the judges and of the Bar are more reflected in the method of investigation of crime in England than in our younger community.

A substantial chapter is devoted to the interrogation of witnesses and of accused persons, the rules which have developed with the object of obtaining statements and confessions which are voluntary, true, and obtained with due regard to the liberty of the subject, and to the general views of the English community. The position is clearer and more favourable to the accused in England than in Victoria where the Evidence Act 1958, section 149, provides that confessions made under threats or promises are not to be rejected unless the presiding judge is of opinion that the inducement was really calculated to make an untrue admission of guilt. In Victoria there are no 'Judges' Rules' although the English rules have been copied into the Standing Orders issued by the Chief Commissioner of Police to the Force. A breach of these rules in Victoria, although taken into account, does not necessarily mean that a confession is rejected.[1]

In the chapter on Arrest and Detention the author describes the safeguards in England against unlawful arrest and subsequent detention without a speedy trial. The contrast with the 'police state' is well noted. The final chapter on the Legal Process again emphasizes the safeguards against injustice to an accused person who has been charged with a criminal offence.

The author believes that the system operates better in England because (in contrast to America and to Victoria) the English are an ancient and well-established community and their ways of life are governed by understandings which are traditionally operative, and which are accepted by the people as part of their way of life.

The text expresses clearly the author's view that the English system

[1] *R. v. Lee* (1950) 82 C.L.R. 133.

is the best available and that it depends for its successful working on a number of peculiarly English notions, and in particular upon the English idea that unwritten rules about conduct and behaviour are better than precise formulae, and stronger protection for the citizen than a formal code.

R. H. DUNN*

Gentlemen of the Law, by MICHAEL BIRKS (Stevens and Sons Ltd, London, 1960), pp. i-x, 1-304. Australian price £1. 14s. 6d.

When we consider the value which the English lawyer has always placed on precedent and the care which he has taken to record the judgments and transactions of the past, it is surprising that the history of the legal profession itself has been so neglected, and that Mr Michael Birks' *Gentlemen of the Law* is almost the first comprehensive history of the solicitors' branch of the profession.

Mr Birks commences his story in the thirteenth century when, to avoid the inconvenience of personal attendance at court, litigants began to adopt the practice of appointing a friend or retainer to appear as their attorney. Gradually there grew up a body of persons who, for a consideration, were prepared to act as attorney for anyone who desired their services.

The mediaeval organization of the profession whereby each court had its own body of attorneys with an exclusive monopoly of business in that court became quite unsuitable when the various courts began to compete for business, and when the Court of Chancery began to interfere with the jurisdiction of the common law courts by means of the injunction. When separate actions in different courts were necessary to obtain different remedies arising out of the same cause of action, it must have been most inconvenient if each suit had to be conducted independently by a separate attorney. The difficulty was overcome by employing others to supervise the activities of the attorneys: these came to be known as solicitors. Later the name came to be associated with those who practised in the Court of Chancery although the term was not applied exclusively to those who practised in that Court until 1729.

The transfer of land by fictitious actions and the enrollment of deeds in the court naturally meant that conveyancing became part of the attorney's practice.

In later chapters the author deals with the growth of the profession in the seventeenth and subsequent centuries, the organization of the solicitors as a corporate body through the Society of Gentleman Practisers in the Courts of Law and Equity, and the Law Society, and the influence and activity of solicitors in the field of law reform. He also provides the answer to many intriguing questions, such as why the term 'solicitor' has completely replaced the older 'attorney', the court's control over solicitors as 'officers of the court' and the (pre-inflation) fee of six shillings and eightpence which is not any proportion of the guinea.

Mr Birks has deliberately chosen to tell his story in terms of individuals, setting them against the background of their times. Such a method, as Mr Birks himself admits, is open to the obvious criticism that one cannot be sure that those whose activities are described are typical of the profession

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