

The picture that Sir Ivor Jennings and Mr. Tambiah present is of a constitution which, if it is patterned very closely on the United Kingdom model rather than drawing more substantially upon indigenous Ceylonese experience, is at least the preferred choice of local leaders and is also the culmination of an unbroken chain of development, under British rule, towards representative government and independence. Was it altogether wise, in view of the relative lack of experience in self-government at the time Ceylon attained its independence after World War II, to adopt a constitution based substantially on the United Kingdom principle of the sovereignty of parliament, without any certainty that there would develop in Ceylon that major working check upon legislative majorities under the United Kingdom Constitution—a strong and stable two-party system? The authors of the present study do not offer us any picture of the current state of the party system in Ceylon under the new constitution. It seems clear, however, that in avoiding the temptations of drafting a cumbersome all-foreseeing constitutional instrument, after the post-1918 European constitutional pattern, the Ceylonese Constitution-makers have placed a large degree, perhaps too large a degree, of trust in men rather than in legal prescriptions: custom and convention to this extent, it is clear, will be the life-blood of the new constitution. The Indian Constitution-makers, by contrast, have distrusted men perhaps too much and have attempted, by elaborate written formularies, to make theirs a government of laws alone and not of men. Which of these approaches is most likely to produce a viable and enduring constitution? The Western World has a stake in the success of both these constitutions and will watch with interest and sympathy the working operation of each of them over the ensuing years.

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ACTIONS FOR DECLARATORY JUDGMENTS (2d ed.). By Walter H. Anderson.  
Atlanta: The Harrison Co., 1951. Pp. 2171 (3 vols.). \$60.00.

"TRIAL by combat" need not be synonymous with trial by technicality. If society is to retain (or regain) its faith in the judicial process, judicial procedures must be clear, practical, expeditious, and inexpensive. The declaratory action has come to be identified with these attributes. It might be hoped that these adjectives could also be used to characterize this treatise on the declaratory remedy. Such, unfortunately, is not the case.

The style is complex and confused, and there is a profusion of extraneous detail. Instead of incisive critical analysis, there is an incessant repetition of the many facts of many cases. The following abstract affords a striking illustration of these observations:

"Where an action was brought for a wrongful death against a landlord, and the basis of the action was that the deceased was the

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son of a tenant in the premises owned by the landlord, and that the landlord failed and neglected to provide the tenant's apartment with sufficient and proper heat, and that by reason of such neglect the tenant's infant son, two and one half years old, became ill with a severe cold which developed into pneumonia and resulted in his death, and it further appeared that the landlord had obtained a policy of insurance which covered liability caused by accident and arising out of the hazards defined in the policy, under these circumstances the insurance company is entitled to bring a declaratory action to determine its rights and liabilities under the policy issued with respect to such action brought against the landlord; and this is true in spite of the fact that the landlord urged that there was another remedy available to the insurance company, since it could await the outcome of the litigation involving liability for the death of the infant, but such procedure, the court pointed out, was fraught with danger by refusing to defend the death action and thereby the insurance company might subject itself to possible liability, and since a justiciable controversy existed between the insurance company and the insured as to the coverage, declaratory action was proper to determine the rights and liabilities of the policies. Likewise a declaratory action will lie to determine whether a life insurance policy has been forfeited, cancelled or the rights thereunder otherwise terminated."<sup>1</sup>

An understanding of the concept of justiciability is a prerequisite to a complete understanding of the declaratory action. An entire chapter<sup>2</sup>—some one hundred thirty-seven pages—is devoted to this subject. The author cites myriad cases and repeats over and over again the doctrinal statements that courts will not decide *abstract, theoretical, academic, moot, or hypothetical questions*; that a *real, actual, or bona fide controversy* is necessary. But the pragmatic meanings of these tag-lines are never fully explained; they are merely repeated—in first one form and then another.

Admittedly the concept is difficult, and admittedly the language of the opinions is somewhat less than satisfying, but the lawyer looks to a treatise for clarification—not for rote recitation of loose language. An example of the problem is to be found in the section entitled "Distinctions Between Declaratory Judgments and Advisory Opinions."<sup>3</sup> *Here*, the author says, is the essential difference between an advisory opinion and a declaratory judgment: a declaratory judgment is binding upon the parties, adjudicates present rights, and may be pleaded as *res adjudicata*; an advisory opinion, on the other hand, is binding upon no one, is merely the opinion of the judges or the court, and will not support a plea of *res adjudicata*. But the author apparently does not realize that the problem presented has not been solved. The courts decide what is binding, what is an adjudication of present rights, and what will support a plea of *res adjudicata*. What then is the true line of delineation? What

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1. Pp. 1387-8 (footnotes omitted).
  2. Chapter 2, pp. 35-171.
  3. Pp. 53-6 (§ 11).

basic principles guide the courts in this area? This treatise fails to answer such questions for this reader.

This set was designed for the use of the practitioner.<sup>4</sup> But if a book is to be a satisfactory working tool for the attorney, the materials in it must be readily accessible. This treatise does not meet that requirement. There is a complete lack of adequate cross referencing. Instead, there is frequent fragmentary repetition of principles elsewhere discussed. A blatant example of duplication is found in Chapter 5. Two of its fifty-nine sections are entitled "Necessity of Exhausting Administrative Remedies."<sup>5</sup> Each proceeds in majestic isolation; there is no cross referencing and no citation of common authority. And a third section in the same chapter is denominated "Relief in Federal Administrative Agency as Barring Right to Declaratory Judgments, When."<sup>6</sup> But again there is no cross referencing, and again no citation of common authority.

In the opinion of this reader, the work under discussion fails to do justice to the clarity, simplicity, and utility of the declaratory action.

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THE DETECTION OF MURDER. By William F. Kessler, M.D., and Paul B. Weston. New York: Greenberg Publishing Co., 1953. Pp. xv, 239. \$3.50.

IN 1839 three medical men,<sup>1</sup> whom history has otherwise committed to oblivion, published in the city of Edinburgh, Scotland, their *Suggestions for the Medico Legal Examination of Dead Bodies*.<sup>2</sup> On the flyleaf of this pamphlet the trio stated their purpose as follows:

"It will be remarked, that we propose to turn the attention of the Medical Inspector to some points which are often inquired into, not by him, but by magistrates, or other official persons, not of the medical profession—such as the place where the body is found; its position when first seen; surrounding objects; the clothes, etc. This we have been led to do, because we have had occasion to observe, that on such points, *important articles of evidence have been overlooked, owing to the absence of a medical man, to whom alone their importance would be apparent.* . . ."<sup>3</sup>

These remarks would serve as an appropriate preface to *The Detection of Murder*, published one hundred and fourteen years later. The co-authors, Dr. Kessler and Mr. Weston (who is a deputy-inspector of the New York City Police Department), not only demonstrate that doctors and detectives can

4. See prefaces to first and second editions.

5. §§ 204, 234.

6. § 202.

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1. Thos. Stewart Traill, R. Christison, and James Syme.

2. Pamphlet, published January 19, 1839, by Alexander Smellie.

3. Emphasis added.