

Les Cahiers de droit

H. G. HANBURY, *English Courts of Law*, Fourth Edition, Oxford University Press, London, 1967, 152 pages, \$1.50

Peter W. Hutchins



Volume 9, Number 2, 1967–1968

URI: <https://id.erudit.org/iderudit/1004392ar>

DOI: <https://doi.org/10.7202/1004392ar>

[See table of contents](#)

Publisher(s)

Faculté de droit de l'Université Laval

ISSN

0007-974X (print)

1918-8218 (digital)

[Explore this journal](#)

Cite this review

Hutchins, P. W. (1967). Review of [H. G. HANBURY, *English Courts of Law*, Fourth Edition, Oxford University Press, London, 1967, 152 pages, \$1.50]. *Les Cahiers de droit*, 9(2), 304–304. <https://doi.org/10.7202/1004392ar>

Tous droits réservés © Université Laval, 1967

This document is protected by copyright law. Use of the services of Érudit (including reproduction) is subject to its terms and conditions, which can be viewed online.

<https://apropos.erudit.org/en/users/policy-on-use/>

Érudit

This article is disseminated and preserved by Érudit.

Érudit is a non-profit inter-university consortium of the Université de Montréal, Université Laval, and the Université du Québec à Montréal. Its mission is to promote and disseminate research.

<https://www.erudit.org/en/>

bec courts. This task is frequently onerous for the lawyer who must wade through the various classical treatises of French law, and it is often of precious value to have at hand an orderly summary which is both easy and time-saving to consult. In addition, the new chapter on matrimonial régimes is of particular interest, as the « société d'acquêts » will probably be introduced as the legal régime when the present revision of the Quebec Civil Code is completed. A study of the French institution would be an excellent preparation against this eventuality.

Patrick J. KENNIFE,
Law II

H. G. HANBURY, *English Courts of Law*. Fourth Edition, Oxford University Press, London, 1967, 152 pages. \$1.50

This little book on the English legal system by H. G. Hanbury has two great advantages for the beleaguered student of law—it is brief and readable. As D. C. M. Yardley states in his Preface to the Fourth Edition, « The volume has been a work of literature as well as of law, and many students have welcomed the aid towards understanding which has been provided for them in so small a compass and in such a pleasurable way ».

The author is primarily concerned with the development and present constitution of the English Courts and in accordance with the spirit of English Common Law his approach is an historically oriented one. The book succeeds in presenting the two great phenomena of the English law—sometimes so baffling to students of other systems—evolution through usage and as the author puts it, « the English dislike for writing down more than the occasion demands ».

For the first—evolution of institutions of English Common Law—Prof. Hanbury has skillfully managed to reduce the contortions of English legal history into general patterns such is his assertion with Maitland that the whole history of English justice and police might be brought under the rubric of « The Decline and

Fall of the Sherrif » symbolizing growing centralization. Another example of evolution traced is the trial by jury which we follow from the statut of 1275 authorizing the use of « peine forte et dure » to *Reg. v. McKenna* in 1960 when it was held that a judge may not hurry a jury into arriving at their verdict. The author's treatment of the struggle between the three common law courts—King's Bench, Exchequer and Common Pleas—reads like the report on an exciting chess game whereas his chapter on the Court of Chancery and the development of « equity » reveals the mystery of this phenomenon, little known to Civil law systems.

Of perhaps greater value to the reader unfamiliar with the British legal system is Prof. Hanbury's analysis of English aversion to codification as he writes « The English habit of mind prefers the fortuitous to the systematic : it prefers to leave problems to be dealt with as they arise : in a word, it prefers judicial precedent to codification, which has seemed indispensable to framers of the legal schemes of most European countries ».

If any reproach is to be made concerning Prof. Hanbury's work, it would have to be a questioning of the author's somewhat self-righteous tone concerning the legal system he is describing and the judiciary in whose hands it rests. For in any system it is possible to select particular advantages vis a vis others whereas a global comparison is perhaps more just. As for the judicial personnel, human weakness is never absent from the affairs of men.

All in all, however, *English Courts of Law* is a lucid, readable, account of the development of and philosophy behind the English legal system. To read Prof. Hanbury is to begin to understand what to the layman and stranger is often the most perplexing aspect of this system—the fact that it « has not been planned, it has developed “from hand to mouth” with a certain spontaneity, to meet contemporary needs ».

Peter W. HUTCHINS,
Law II