

Criminal Law in Action (Book Review)

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extremely important aspects of the process of recovery and are among the most salutary measures which have been adopted in recent times. During the next decade, this branch of the law must prove of vital importance to the welfare of the people and it is altogether fitting that it should begin to occupy a more important sphere in the legal thinking of students.

For these reasons, the new edition of Professor Duberstein's case book is a welcome addition to the law library. It is not only a most useful compendium of cases with which to introduce a student to the intricacies of Bankruptcy Law, but in fact will find a useful place in the law library of every lawyer who has to do with these matters. The scientific classification of all important decisions under the new and old sections of the Bankruptcy Law, the convenient reprinting of the General Orders in Bankruptcy and of the entire statute in its modified form are of inestimable utility to lawyer and student alike.

This reviewer takes personal pride in the achievement of his colleague in the preparation of this book and is glad of the opportunity to state unequivocally that it ranks among the finest case books available for students' use.

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CRIMINAL LAW IN ACTION. By John Barker Waite. New York: Sears Publishing Co., Inc., 1934, pp. 321.

This is not a text book, though written by a professor of criminal law. It is the expression, in rather popular form, of practical views on the failure of our criminal law. The philosophy of the criminal law is presented understandably, so that a well-informed layman or a lawyer who is not a technical criminologist can easily comprehend it. The sum and substance of the author's view on the purpose of the criminal law is that its punishments are imposed as retribution, or perhaps vengeance; that its proponents justify it on the ground that it acts as a deterrent and, in any event, as an expression of the moral indignation of the community. Professor Waite suggests, as has frequently been pointed out, that punishment does not actually deter and that it would be sufficient if the criminal process were something in the nature of a social disapproval of the prohibited act. By way of example, he cites an instance of Soviet justice, in which a culprit is publicly censured for his iniquity and no other penalty imposed.

The insanity defense is discussed. Its use in bringing about a breakdown in the criminal law is grossly exaggerated, though the author fails to say this. The number of insanity defenses the country over in the last decade represent a pitiful and almost negligible minority of criminal-law acquittals. Professor Waite makes the suggestion, which ought to be considered seriously—namely, that insanity shall not be considered a reason for exemption from punishment, but that it should be the purpose of the law to segregate, rather than punish, dangerous prisoners. Of course, the law attempts to do this now in part when

an acquittal on the ground of insanity must be stated in that form, so that the defendant may be committed to an institution for the criminal insane.

The over-zealousness of the courts in protecting the technical rights of the accused is, of course, strongly disapproved, but the safeguards are not condemned. This is an example of the sane attitude toward the problems of the criminal law which characterizes the entire work.

As to jurors, judges, police and prosecutors, many chapters are devoted, with very interesting discussion and a wealth of examples, to show, in substance, that what we need is not a new system, but a better personnel. A discussion of the disorganization of the police into a multitude of units brings us to the recent recommendation of the American Bar Association that a Department of Justice be established in each state to take care of the entire state's police and prosecuting system.

The newspapers are taken to task for publishing the plans of the police, creating a popular belief in the inefficiency of the police, and rendering it practically impossible to obtain an unprejudiced jury because of excessive discussion of the case in advance. The suggestion is renewed in this book that the newspapers can render a substantial service by exposing criminals to contempt, instead of treating them as heroes, and by giving as much prominence to convictions as to sensational and apparently successful robberies and hold-ups.

It is suggested that failure of law enforcement is due in part to the absence of popular contempt for law-breakers and that this is due perhaps to the fact that the public in many cases does not want its laws enforced. The author suggests that the technical attitude of the courts is partly responsible for this. This view does seem to be consistent within itself, because if the public does not want its laws enforced, it probably welcomes technical decisions that defeat the law's primary purpose. As "a new deal of the criminal law" the author suggests that society protect itself by segregating the socially unfit, rather than by attempting to frighten prospective criminals into conformity by threats of punishment.

It is always possible to abuse the courts. Probably they deserve some of it. It is the custom to decry the conduct of the appellate courts for their many reversals of just convictions. The reviewer's experience is primarily with the federal courts of the Second Circuit and the New York courts. No such attitude is to be found there and probably careful analysis of the work in other federal circuits and of other states will show that our higher courts are today more zealous in protecting successful prosecutions than they are in finding loop-holes for the defense.

The book is very interesting and, though it proposes nothing that has not been considered before, it is presented with a wealth of detail and a very moderate amount of formal legal citation; it is very informative and serves to keep alive the inquiring attitude into the efficacy of a most important branch of our modern institutions.

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