

Criminal Justice in America (Book Review)

Vincent J. Keane

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Keane, Vincent J. (1930) "Criminal Justice in America (Book Review)," *St. John's Law Review*: Vol. 5 : No. 1 , Article 42.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol5/iss1/42>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

controversy adversely to the workers. The practice is practically confined to the United States and rests wholly on judge-made law without statutory support. Its remedies are crude and inappropriate. The intricate and delicate issues of labor disputes present problems of social and human relationship which may be composed by a patient and painstaking process of sympathetic counsel and mediation, but cannot be justly determined by a summary order or judgment of a court.

In view of the growing public sentiment that the evils, both substantive and procedural, inherent in the practice of settling labor disputes by court injunctions, should be effectively remedied, the book of Messrs. Frankfurter and Greene is very timely. In a concise volume of 228 pages of text the authors trace the history of the use of injunctions in labor disputes, discuss the law underlying the practice as it has gradually developed in the Federal courts and in the two most important state jurisdictions, New York and Massachusetts. The volume includes a detailed statement of the procedure in such injunction suits, of the scope and sweep of the typical injunction orders and of their practical effect on the combatants. It collates the attempts of state legislatures to limit the power of the courts to issue injunctions in labor disputes or to reform the procedure in such actions, and concludes with a thoughtful analysis and explanation of the bill now pending before Congress for the reform of the practice and procedure of the Federal courts in labor injunction cases.

Elaborate summaries of reported labor injunction cases in the courts of the United States and the states of New York and Massachusetts are appended to the volume. The book is written in easily readable English and bears evidence of unusually thorough and intelligent research. It will be of great help not only to practicing lawyers but to all persons interested in modern labor problems.

MORRIS HILLQUIT.

New York City.

CRIMINAL JUSTICE IN AMERICA. By Roscoe Pound. New York: Henry Holt and Company, 1930, pp. 225.

Those who fritter away time reading book reviews must be more than familiar with the ill-defined kinship that joins book and season. Still, who would deny to the vexed reviewer this figment of convenience—particularly when words without end might be no more expressive than a casual mention of appropriate weather? To use again the well-worn device, the five lectures of Dean Pound's, now published under the title "Criminal Justice in America" should, it seems, be characterized as cold-weather reading. In fact, though the thought suggests flippancy, late October and early November seem especially suited for the proving of the book's potential value. If only those who at that time crowd out pleasant radio programs in the name of politics would absorb certain of the good dean's paragraphs, their unsocial conduct could be borne

with a semblance of grace. It would indeed be pleasant not to hear loud promises of perfect administration of criminal law in exchange for a vote. It would be more than pleasant not to hear all laxity charged to recent and unprecedented acts of an opposing party. But surely this is hoping for too much; our spellbinder would probably acquire no more from his reading than the author's venial sins, polysyllabic adjectives and unending classification.

The subject of the first lecture is "The Problem of Criminal Justice." It is Dean Pound's view that as in the eighteenth and nineteenth centuries men stressed the limiting of interference with personal liberty, so now the emphasis is upon the general security and the efficiency of enforcing machinery. The criminal law, he tells us, is today called upon to do the whole of work once shared with domestic and group discipline, and is required to attempt it with the devices of a simpler society and subject to historical hindrances. But this is not all the problem; to reckon so would be to exclude from consideration the vast extension of the field of criminal law. Of this extension, he brings to our attention such items as the multiplication of statutory crimes, conflicts arising out of modern industrial conditions, and the dangers that inhere in urban congestion. A consideration of penal treatment and of the office of prevention complete the lecture, a lecture marred, in the reviewer's opinion, by needless intricacies of style and development.

The second of the series is entitled "The Difficulties of Criminal Justice." Its starting point is the basic incongruity of our system—general rules for unique situations. In its development, it touches upon such matters as the ill effect of things designed originally to make the law responsive to public opinion, of things conceived in solicitude for individual rights, of jury-made law, and of popular demand for stereotyped punishments. It treats of the sinister effect of the activities of political figures and of the fringe of the bar, of prejudicial police action, and of newspaper trials. On the whole, it presents a searching analysis, though with possibly undue emphasis upon a connection between theories of natural rights and disrespect for criminal law.

The third lecture, "Our Inheritance from England," brings us to matters more within Dean Pound's self-avowed field, the machinery of legal institutions. His sketch of the development of English criminal law and procedure is deserving of commendation, praise diminished, however, by a doubt that even the rigorous English Puritan ever attempted Coke's disordered Third Institute.

"Criminal Justice in Nineteenth-Century America" is the subject of the fourth paper. Strangely, the first portion of it, entitled "The Background of Our Formative Criminal Justice," seems the most unsatisfactory part of the book. Dean Pound finds that four viewpoints of the last century influenced our criminal jurisprudence. The first of these, which he terms the pioneer attitude, is thrice subdivided. We are told that the pioneer society was in effect a refuge for the discontented and that the fellow-feelings of the discontented resulted in much over-looking. We are told that the "unwritten law" opinions of pioneer groups warped the law of insanity; and, as the third sub-point, that the pioneer's distrust of expert testimony hampered the legitimate use of such evidence. It might be mentioned, parenthetically, that the English courts too had trouble with the law of insanity and established rules at least as unsatisfactory. As the second of the four influences, the author speaks of the theories of natural rights and of natural law that prevailed in the last century.

To the reviewer it seems doubtful that there was any such widespread appreciation of these theories, conscious or unconscious, as to have impressed those who created and are now creating the problems of criminal justice. The criticism of the third enumerated viewpoint is similar; but few of the problem-creators could have been aware of the conflicts between the legislative and judicial branches of government, and fewer still would have associated conflicts presented in civil cases with feelings of the sanctity of criminal law. The entrepreneur viewpoint, the fourth in the category, is, it develops, the attitude of "big business." As such, it can hardly be allocated to the nineteenth century.

In summarizing this discussion of background, in one of the book's most valuable paragraphs, Dean Pound calls attention to the lawlessness that has persisted, since colonial days. Very shortly, however, he differentiates the earlier lawlessness; in the last century crime was only "rough, virile vice," and the criminal "a neighbor who had gone wrong for the time and the action in question."

The remainder of the fourth lecture is matter familiar to those who have had a criminal law course—the construction of criminal statutes, the lack of a great writing upon the subject, the machinery of enforcement, and the procedural reforms apparent to the casual reader of the reports.

The final paper of the group is "Criminal Justice Today." It, too, is begun with a discussion of background, this time the much-altered background of the present century. Again there seems basis for dissatisfaction. Emphasis here is upon the change in economic conditions that, to use the author's words, is "doing away with the essential relation between local political institutions and administration, on the one hand, and economic interests on the other." It is somewhat surprising to hear the vanishing relationship attributed to the nineteenth century. It is more surprising to hear of the new indifference to politics, for surely modern historians have done something to dispel the myth of the perfect citizen of earlier years. Then, too, there is Dean Pound's finding that the newer instrumentalities of diversion, standardized though they be, have made for increased individual self-assertion, thus tending to confuse conceptions of conduct. This may be a plausible explanation for some liquor law violation but hardly apt for organized crime.

The remainder of this lecture seems the most satisfactory part of the work. The author's discussion of "The Machinery of Criminal Justice in the Modern City" is, in most respects, especially well done. He sees as obstacles to improvement of our system the democratic tradition with its specious regard for "the people," the legally ignorant press account, rural domination of state legislatures, and the seemingly inevitable excesses of our administrative officials. He discusses briefly the formal agencies of law improvement and closes with a statement of his idea of the aims of an improvement program. It may be said, without misgivings, that Dean Pound's cautionary foreword was quite unnecessary; these lectures cannot be his last word on criminal justice.

VINCENT J. KEANE.

New York City.