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An Introduction to Criminal Justice--Text and Cases (Book Review)

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In Volume VII (the Index) there is a list of the statutes referred to in the text and footnotes beginning at page 519 and ending at page 577. It would be difficult to find any essential statute which has been omitted.

There is an abundant citation of authority from every jurisdiction in the United States. The table of cases is included in Volume VII beginning at page 3 and continuing to page 516. A conservative estimate would fix the number of such cited cases at a figure somewhat in excess of 40,000. The entire index is very detailed and completely reliable. The format is attractive.

This work should be unusually helpful to practicing lawyers and professors of property law throughout the country. It contains a complete restatement of the existing rules of property law on the multitudinous subjects covered and a comprehensive and detailed analysis of such rules. Extraordinary fulness of the text and extensive documentation are designed to enable lawyers to determine with reasonable certainty the trends and direction of the law and to handle competently novel or unusual problems in the law. While there is some indication even at this early date that this work has already been advantageously used in the adjudication of an unusual question in the field of powers of appointment, it may be confidently averred that such use will correspondingly increase as bench and bar become aware of its adaptability in this respect. But whether a question is new or old, usual or unusual, henceforth neither judge nor lawyer may be certain that his research is sufficiently painstaking and exhaustive until he consults this work and acquaints himself with the wealth of learning contained therein.

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AN INTRODUCTION TO CRIMINAL JUSTICE—TEXT AND CASES. By Orvill C. Snyder. New York: Prentice-Hall, Inc., 1953. Pp. xvi, 776. $8.00.

"Nobody cared how he moved around," said Abe "Kid Twist" Reles. "I looked to kill you and you looked to kill me." The words came from the heavy lips of a slight man whose kinky hair crowned a low wrinkled forehead, beady brown eyes and a flat nose. This cruel, sadistic slugger from the Brownsville section of Brooklyn had begun his criminal career in 1920 when he was just 13. In the next few years he was to be arrested 43 times on charges running the gamut from juvenile delinquency to murder, including five times for the top crime. Yet he enjoyed enough freedom to commit 18 murders in Brooklyn's bloody syndicate of Murder Incorporated, all of which he readily confessed. What was criminal justice in Reles' case? His record—clean of conviction for serious crime—was to remain unbesmirched when somehow he

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strolled out an upper-story window of the Half-Moon Hotel in Coney Island, a jewel of a mystery even for the television viewers throughout the nation of the Kefauver Committee proceedings.

It goes without saying that "The Kid," because of chronological circumstance, could never have been on speaking terms with Blackstone or Coke. And even if he could have been with his common-law predecessors, the legal consequence of whose activities are described by Holdsworth and Pollock & Maitland, Reles surely would have looked upon them with the contempt of the wholesaler for the retailer. From Reles' own locale comes this book with cases and text on criminal justice by Professor Snyder of Brooklyn Law School. Like all but a few publications on the law of crime for law school use in the past two decades, this book does very little to bridge the wide canyon between the current problems of criminal law administration and Blackstone's common-law treatise replete with its false reasons for actual legal rules. In fairness to the prodigious task of the author, it should be said that the book apparently does not pretend to make such an undertaking, and consequently does not fail to present a fairly accurate statement of the common law of crime suitable for the eighteenth century Anglo-American world. But the mystery, as unfathomable as the death of "Kid Twist" Reles, is why law school publishers have persisted in ignoring law in action for law in the books in the criminal law field. Without doubt a good selection of text and cases on the common law may well suffice for a course in contracts or property; but it cannot do the job for modern criminal law for several reasons:

(1) *Pre-eminent statutory ingredient.* The once commanding position of the common law of crime has been significantly reduced in the past half-century. In at least sixteen states (including New York), the common law has been expressly abolished in this field by constitutional, statutory, or judicial mandate, and in the remainder of the states the legislatures have provided the substantive framework for the law of crime. In no other field of law does legislation occupy so pre-eminent a position. Only recently, the American Law Institute for the first time authorized a Restatement in this field. Significantly, the project is not to be a compendium of judicial decisions, as in other fields, such as contracts, torts and property, but rather a model code to serve as a norm for legislation.

This greater statutory ingredient affects not only content but also objectives in teaching criminal law. *First,* a primary consideration in giving the course must now be what the criminal law *ought* to be, rather than merely what it *is* or *has been.* An unsatisfactory substantive rule may now readily be modified by statutory amendment—something that could not always be done with unsatisfactory judicial decisions. *Second,* the techniques and skills involved in the construction and interpretation of statutes assume paramount importance in criminal law, usually for the first time in the law student's experience. Consequently, unless the law school offers a course in legislation or legal method in the first year, criminal law must provide all of the fundamentals of statutory interpretation for the entire law school program.

(2) *Tremendous area of administrative discretion.* A second consideration is the unparalleled discretion vested in administrators of the criminal law. The complainant at common law had the option of coming forward with an accusation, which is now largely within the discretion of the police. The examining magistrate has power to discharge the accused after preliminary hearing. The grand jury may ignore charges and refuse to find an indictment. Under certain circumstances, the prosecutor may exercise his discretion to have the court dismiss an indictment after it has been found. Or the prosecutor may exercise a tremendous discretion in accepting a plea of guilty to an offense less severely punishable than the one charged. Of course, the trial jury may acquit and in doing so ignore the charge of the judge with respect to the substantive law. After conviction the discretion of the judge in prescribing treatment has very few limits imposed by the criminal law. For example, in some 2500 sections of the New York Penal Law, the legislature has undertaken to prescribe minimum treatment in only a handful of instances. In all of the others, only maximum punishment is specified by statute. Consequently, whether a convicted offender is to go to jail for a long or short period, be placed on probation, or have his sentence suspended, is almost exclusively a matter within the discretion of a single administrator. If the offender should be sent to prison, the parole board has discretion within wide limits set by the legislature to release him before completion of his sentence. Finally, there is the executive power to pardon or commute sentence, which rests without legislative control in the exclusive discretion of the governor.

The existence of such vast discretion makes it clear that a course devoted exclusively to appellate court decisions and text of common-law ones, does not begin to come to grips with the central problems involved in the administration of criminal law. The objectives of a sound course in criminal law must include mastery of principles of administration if this discretion is to be exercised honestly in the interests of criminal justice, and not in response to political pressure.

(3) *Special factors in administration.* Closely related to wide discretion as distinguishing the criminal from other fields of law are certain factors peculiar to its administration. First among these is the phenomenon of nullification. No matter how socially reprehensible certain behavior happens to be, it may not be feasible to make it criminal and provide severe punishment for engaging in it unless the cross-section conscience of the community is agreeable. The criminal law depends for its enforcement upon non-lawyers: complainants, witnesses and jurors. If a certain section of the penal law becomes unpopular or its penalty too severe, the lay members of the community will refuse to participate in its enforcement. Moreover, unlike the situation in unpopular causes of action in contract, tort, or property, the cross-section of the community has the final word in criminal law. A verdict of acquittal is unappealable and final in a criminal case; but a verdict for the defendant in the tort, contract, or property case is subject to review by professional administrators. One historic illustration of this is the national experiment with prohibition.

Another of these factors which distinguish criminal law from other fields of law is the effect of the opposite to severity in its administration. If the

criminal law fails to make criminal at all or treats leniently seriously undesirable behavior, the repercussions in the community are the familiar ones of lynching, vigilantism and self-help by complainants. The same cannot be said of the failure to make actionable certain situations in torts, contracts, or property.

(4) *Involved relationship with other social sciences.* The substantive rules in torts, contracts, property, and other courses on the civil law side of the law school program are equally or more numerous than the ones in criminal law. But the civil rules somehow do not cause the psychiatrist, psychologist, criminologist, sociologist and welfare counselors the same vexatious concern as do the substantive rules of criminal law. Particularly, the responsibility in criminal law of insane persons, intoxicated and immature offenders, and sex criminals has felt the impact of criticism of these other disciplines. The law, accordingly, has been modified in response to their pressure in these areas in almost every jurisdiction. Indeed, the administration by lawyers of criminal law has been seriously challenged by such critics. It is therefore important that a course in criminal law take as full account as possible of the interrelationship of the substantive rules of criminal law with the theoretical and empirical data in these fields. It is equally important to distinguish the lawyer's approach to criminal law in the light of the data from these related fields from the approach of the social scientist to the problems presented by the same data.

Omitting these basic considerations, the objectives of Professor Snyder's volume must present a somewhat truncated version of the law of crime. Viewed within its own field, the book devotes slightly less than half of its pages to cases which on the whole have been well selected. Cases which have been old favorites in many books are judiciously supplemented by an excellent choice of recent ones. Only two cases and but so inconsiderable a portion of the text are included in the area of procedure that the book may properly be considered one on substantive law.

Lacking an authoritative modern treatise on the law of crime, the major portion of Professor Snyder's undertaking in this area must certainly be considered an ambitious and original one. The text treatment is extensively documented by footnote references to cases, A. L. R. notes, Blackstone, Coke, Holdsworth and Pollock & Maitland. Some of the case references do not support the holdings stated in the text. While statutory material has been omitted, there are occasional footnote references to sections of statutes and sometimes summaries of these statutes which are misleading or incorrect. It is regrettable that, except for a few articles from the author's own pen, a wealth of material produced in the law reviews in recent years is conspicuously absent from the citations. The style is the author's own original one, but the objective—in the tradition of Corpus Juris—is to present some American common law of crime as it is, although the existence of a body of law as such, apart from statute, is disputed. In any event, the author does not undertake a critical appraisal of the case law discussed in the text, or attempt to arrive at the criminal law as it ought to be in the light of a means-end perspective. No doubt some of

the errors are quite inadvertent and together with a few of the deficiencies of objective, may readily be overcome upon revision.

In addition to the excellent selection of cases, the book is handsomely bound and tastefully printed with widely margined pages which should delight the student who makes notes in his book as he reads.

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CASES AND MATERIALS ON NEW YORK PRACTICE. By Louis Prashker. Brooklyn, Fourth Edition, 1953. Pp. xii, 1276. $12.00.

"For a . . . teacher, the problem of choosing a case book is somewhat akin to picking out a new suit."[1] In most fields of law he is restricted to "ready-to-wear," but in that of New York Practice, an industrious and gifted tailor has provided the finest of "custom-made" attire. Professor Prashker has continued to improve his product with each alteration and this fourth edition appears at the close of a quarter of a century of teaching the subject. With hesitation, therefore, there are here presented certain observations personal to this reviewer.

The work of preparing any case book must present grave doubts to the editor and is a much greater task than most of us realize. We are indebted to the author for his painstaking and scholarly compilation of this substantial body of law. It reflects a thoroughness that will appeal to both the teacher and the student. The comfort of the reader is kept in mind and the relevant statutes precede the cases. The cases chosen include the traditional as well as those effecting the newest changes, a pattern appearing in earlier editions. The book is not only an exhaustive collection of opinions, but also a scholarly reference work on all aspects of the subject.

Changes in the statute and the efforts of the author to improve what previously has been adjudged excellent material leads to certain omissions. Excerpts from the Federal Rules of Civil Procedure and a former chapter on appeals, which wisely should be left to other courses, are excluded. The edition is made attractive by the inclusion of such recent cases as *Solicitor for the Affairs of His Majesty's Treasury v. Bankers Trust Co.*,[2] illustrating the procedural device of interpleader.

There is no claim to a new approach and this is encouraging, since an examination of the case book leads to the inference that the author seeks only

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[1] 4 J. LEGAL ED. 103 (1951).

[2] 304 N. Y. 282, 107 N. E. 2d 448 (1952). See also Solicitor for the Affairs of His Majesty's Treasury v. Bankers Trust Co., 304 N. Y. 296, 107 N. E. 2d 455 (1952) (dealing with intervention).