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Cases and Other Materials On Criminal Law and Procedure

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Recommended Citation

Ernst W. Puttkammer, "Cases and Other Materials On Criminal Law and Procedure," 7 Southern California Law Review 483 (1934).

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BOOK REVIEWS

The Automobile Compensation Plan. By Patterson H. French. New York, Columbia University Press, 1933. pp. 262. \$3.50.

Readers of this review will recall a study of *The Indigent Motorist and the Constitution*.¹ In that study, was included a brief consideration of the proposal that the principles of Workmen's Compensation legislation be extended to include cases arising out of the operation of automobiles.² The present volume is an elaboration of the ideas there set forth, together with a presentation of relevant fact data.

It is shown that in the State of New York, outside of New York County, 88 per cent. of all negligence cases, and 59 per cent. of all law cases, arise out of the use of automobiles.³ In New York County, the corresponding figures are 57 per cent. and 35 per cent., respectively.⁴ Many problems of detail which would arise in connection with the operation of a compensation plan covering such cases are considered.⁵ Constitutional aspects of the proposal that such a plan be established are considered⁶ and it is examined from the standpoint of administrative law.⁷ A seven-page bibliography is appended.⁸ The entire presentation of the subject is excellent.

The two purposes to be accomplished by such an administrative handling of automobile accident cases are: the relief of court congestion, and more helpful compensation of the injured parties.⁹ The former could be secured by other means with less violence to established principles and methods of procedure. It is hard to see how the latter can be accomplished as completely in any other way.

Here is a problem which should receive the most careful consideration of the legal profession, both from the standpoint of the public welfare and in relation to its practical effects upon the extent of the practice now enjoyed by the members of the profession. A reading of the present volume will convince most lay readers that these controversies should be removed from the judicial into the administrative field. We have here another illustration of the truth that the legal profession suffers, and will suffer, more than any other class in the community from the inadequacies of our present system of the administration of justice. Being more responsible than any other class for the character of that system, this is as it should be. At any rate, the profession should devote its best thought to the present problem, or another large portion of legal practice will be transferred to the constantly expanding field of bureaucratic administration. At the very least, improvements in the administration of justice will remove some of the force from certain of the arguments in favor of the proposal.

JOSEPH M. CORMACK.

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Cases and Other Materials on Criminal Law and Procedure. By Albert J. Harno. Chicago, Callaghan and Company, 1933. pp. lviii, 952. \$5.50.

A case-book on criminal law compiled by so able and experienced a writer as Dean Harno will be expected to set a high mark of excellence, and the users of

¹O'Keeffe, *The Indigent Motorist and the Constitution*, 4 SOUTHERN CALIFORNIA LAW REVIEW, 253 (1931).

²O'Keeffe, *The Indigent Motorist and the Constitution*, 4 SOUTHERN CALIFORNIA LAW REVIEW, 253, 261-262 (1931).

³P.27.

⁴P.27.

⁵Pp.40-82, 112-202.

⁶Pp.83-111.

⁷Pp.203-248.

⁸Pp.249-256.

⁹P.5.

this book probably will not find this expectation disappointed. Not only is able judgment shown in the choice of cases; the non-case material, of which there is a fair amount, is admirably selected to aid in developing an intelligent appreciation of the law. The balance kept between the case and the non-case material also seems to the reviewer a very satisfactory one.

In view of the general agreement, these many years, that adequate teaching calls for constant stressing of particular crimes—constant examination of each point in the light of the particular offense then and there involved—with “general principles,” floating vaguely among all crimes, reduced to a minimum, it is a strange thing that case-books on the subject have continued largely to deal with it from the old standpoint—many general doctrines, applicable, seemingly, to all crimes alike, with the minimum of space finally devoted to particular offenses and their individual peculiarities. Dean Harno, however, has gone over wholeheartedly to the “new” approach in this matter. Barring some hundred and forty pages at the beginning and a chapter on procedure at the end, nearly his whole book deals with specific offenses, instead of with the “general principles” that theoretically apply to every situation and specifically seem never quite to fit. In fact, one feels that he has gone almost too far in this suppression of “general” sections. For example, there are some defenses based on the defendant's capacity that are much the same in their problems and solutions regardless of the offense to which they are raised. Insanity is such a one. The author confines his insanity cases to the chapter on homicide. True, the defense is most likely to be raised in a murder or manslaughter case, but that seems hardly reason enough to limit its treatment to these crimes. Shall the whole matter again be dealt with in larceny, where there is a defense of kleptomania? And is this dividing it up according to the situation in which the mental disorder happens to have manifested itself the sort of approach that modern psychiatry is showing to be the wise one? Intoxication, too, is confined to homicide, but infancy gets separate treatment in a section of its own. As to the criminal capacity of corporations, this is tucked away in larceny, yet the problem may be raised in many other crimes and should be decided on the basis of arguments of expediency having little or nothing to do with the particular charge that gives rise to the problem.

On the other hand, to break up such a subject as consent and to assign the cases to their particular crimes, as larceny, rape, *et cetera*, is all to the good. The problems raised in the different offenses are themselves so different that only confusion results from treating them as one.

In view of all this it is puzzling that Mr. Harno has continued to treat the negligence cases as a unit. What relationship is there between the question whether a negligent blow is a battery and whether a negligent killing is murder or manslaughter? Still more puzzling is the author's following the orthodox practice in lumping with the negligence cases the cases showing when omission (*viz.*, a failure to act) is equivalent to an act. Negligence deals with the mental part of the crime. Is the person who has brought about a harmful result equipped also with a sufficiently blameworthy mental state where he has failed to think (or realize) those things that society expects him to realize? Omission on the contrary concerns the act part. When is there a duty to act, such that as a result non-action will be the equivalent of action? Such non-action may be intentional or it may be negligent, just as affirmative action may be either intentional or negligent. The reviewer never has been able to understand the apparently uniform practice of combining these unrelated topics of negligence and omission to act.

Some minor inquiries suggest themselves. Why does an intent case begin the cases on assault (with the act cases following), when the opposite, usual, order

is followed in every other crime? Does conspiracy deserve sixteen cases and two long readings? They are well chosen, it is true. They include four Labor and Monopoly cases, but the reviewer at least has always felt that these have no proper place in a Criminal Law case-book. Today it is only fortuitous that these matters are litigated in a criminal court—despite that, they are not really criminal law problems either in subject matter or in treatment. And even if they were, there would not be time adequately to deal with them. Similarly, fourteen cases to burglary is very generous. Curiously enough, neither in the cases nor in any footnote is there a hint that the offense had, at common law, to be performed in the night time.

These are mainly minor criticisms, however. They do not affect the conclusion that the book is an excellent one. Not only are the cases well chosen, as already has been said; the author also displays a wholly commendable independence in not fearing to use a good case simply because it has appeared in some other case-book. Especially helpful is his exhaustive citation of pertinent law review articles and notes. None of the mechanical helps is lacking, such as a good index, a full table of cases (including those appearing only in footnotes), dates of decision appended to all cases cited, *et cetera*. And the publishers deserve a word of praise for the book's comparative freedom from errors in composition.

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Cases on Criminal Law. By William E. Mikell. Third Edition. St. Paul, West Publishing Company, 1933. pp. xxiii, 774. \$5.00.

Cases on Criminal Law and Procedure. By John Barker Waite. Chicago, Commerce Clearing House, Inc., 1931. pp. xvii, 814. \$6.50.

The past two years have produced three new case-books in the field of Criminal Law—the two above named and Dean Harno's "Cases and Other Materials on Criminal Law and Procedure," which is commented on by Professor Puttkammer in the preceding pages.¹ With the implications of one of the statements in that review—namely that there is a "general agreement, these many years, that adequate teaching calls for constant stressing of particular crimes"²—I feel impelled to disagree. In fact, that disagreement is supported by the organization of the two works which are the subject of the present review. To the teachers who have used Dean Mikell's book in either of its former editions, the present volume offers little that is really novel. Some slight concession to the Harno-Puttkammer view is made by placing the 450 pages dealing with specific crimes between a preliminary survey, consisting of three chapters on the "Sources of the Criminal Law,"³ "The Nature of Crime"⁴ and "The Elements of Crime,"⁵ and the chapters on "Defenses Involving the Mens Rea,"⁶ "Defenses in Justification or Excuse of the Act,"⁷ "Privileged Acts"⁸ and "Combinations of Persons in Crime."⁹ This, however, is far from an adoption of the "new" approach. The "general principles" still are discussed as generalities, not as subordinate problems raised by a specific charge—though they are now taught to students who, it is assumed, know the detailed elements of the particular crime charged.

Professor Waite's book, which I have used twice with pleasure, goes completely to the other extreme. Specific crimes, *as such*, are not treated at all—the entire part of the book devoted to substantive criminal law is devoted to "general principles"—the student and instructor being left to piece out the de-

¹*Supra*, p.483.
⁶Chapter 18.

²*Supra*, p.484.
⁷Chapter 19.

³Chapter 1.

⁴Chapter 2.
⁸Chapter 20.

⁵Chapter 3.
⁹Chapter 21.