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Criminal Appeals in America, 1939

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references is expected and desired in case books. Just to the extent, however, that this latter material is expanded and particularized, the freedom of the individual instructor is hampered. He may in class: (1) take the time to work out the problems raised by the extended footnotes; to the degree that he does this he loses control of the details of the course; (2) take up only selected cases of those outlined in the footnotes; (3) ignore them all. Either one of these latter two procedures may prove embarrassing to the instructor because the student may become interested in these more or less collateral problems, and for the instructor to ignore them in class or cut off discussion on them may lead to the idea on the part of the student that the "prof" doesn't "know the answer,"⁴ at least in all its implications—which may indeed, at least as to the younger instructor, at times be true, because there are other aspects of the course that interest him more. Professor Leach evidently does not feel these difficulties and this point being passed, his copious arrangement of collateral cases is admirably made and measures up to the high quality of the whole work.

Particularly helpful alike to the student, instructor and practitioner is an extensive bibliography both of the general treatises on the subject, English and American, and also of articles and treatises dealing with the laws of the individual states.

The condiments that gave an individual tang to the first edition have also been augmented, and even students who do not contemplate a detailed study of the material will get an enjoyment from the newly added footnotes, by a perusal, *inter alia*, of those on pages 39, 236, 738, and 757.

HARRY A. BIGELOW*

Criminal Appeals in America. By Lester B. Orfield. Boston: Little, Brown & Co., 1939. Pp. 305. \$5.00.

If this book is a text it appears to be one of a rather unusual type. The main interest of the author seems not to be a statement of the law of criminal appeals to aid the ordinary student or practitioner. Rather it appears to be written with a view of informing those who would reform our law in order to secure a more perfect system of criminal appeals. Judicial decisions do not receive the major attention except, perhaps, in Chapter V. The main contribution of the book is to give the reader the essence of a large amount of legal literature that has discussed the many ideas that have occurred to many minds over a good many years. In addition, the author presents his own ideas of reform and these frequently appear after other and sometimes conflicting views have been fairly presented. Hereafter, the person who is interested primarily in what has been said or done about appeals in criminal cases should consult Professor Orfield's book. Therein he will find reference to apparently all that has been printed in the English language, and the essence of it has been set forth for convenient use. It is work of patience, well and faithfully performed.

No recommendation can be made that the book be read for general pleasure. It proved to be tough reading to this reviewer because so much is condensed into a relatively brief document. It was no exciting adventure. There is considerable unnecessary repetition aside from the last chapter which is a summary. This may be due in

⁴ Cf. Professor Leach's remark on p. v: "I have learned a lot on future interests since 1935."

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part to the fact that "most of the chapters were published in 1936 and 1937 in various law reviews. . . ." The larger amount of the repetition is caused by frequent comparisons of various systems of criminal appeals, such as the English Criminal Appeal Act of 1907, the Federal Rules of Practice and Procedure in Criminal Cases, and the American Law Institute Code of Criminal Procedure. The Institute's Code receives considerable criticism despite the fact that it was published as a model code that had been prepared by, presumably, some of the best of our experts on that subject. The author apparently thinks that the English have done a better job with their statute. The English are slow in their war activities but they put Americans to shame by the way in which they speedily administer justice in criminal cases.

Without attempting to list every statement which at least raised doubts in the reviewer's mind, a few may be noticed. "Under the present system the rich man is likely to have his case reviewed, the poor man not."¹ No *facts* are cited for this, but only a comment by Wigmore in favor of the automatic review in military courts.

On page 114 appears the statement: "Obviously great injustice results where the sentences vary greatly for the same crime committed under the same circumstances." This statement is amplified in a note which explains "that equality of treatment does not mean that all criminals should be given similar sentences for similar crimes. It means that there should be some rational basis for individualization; if the same crime is committed under identical circumstances there should be the same punishment." What is meant by "identical circumstances"? Identical external circumstances or identical circumstances including the personalities of the defendants? Surely, age, mentality, leadership, and previous career are factors that properly may be considered. If every sort of circumstance is to be considered, how many cases will there be where the circumstances will be identical? However, the reviewer does not mean to suggest that a sentencing board cannot eliminate what at least seem to be injustices caused by the sentence being fixed by the jury that convicts or the judge who presides over the trial court.

Further as to a sentencing policy, Professor Orfield has suggested² "from the points of view of retribution and deterrence perhaps the courts can do as good a job as any agency. But it is from the point of view of prevention and rehabilitation of the criminal that the courts fall down most seriously [citing an article by Livingston Hall]. . . . They have almost no opportunity to learn about sociology, psychology, and psychiatry. Yet it is upon these fields of learning that reliance must be placed if the treatment of criminals is to be individualized successfully. A century ago no such bodies of knowledge were available for sentencing purposes. Today, though the gaps in such knowledge are admittedly great, it would seem that there is much that is useful." As to this the reviewer is skeptical and he wishes that the author had set forth the "much that is useful" in sociology and psychology.

In stating³ the several advantages of using trial judges in appellate courts with overcrowded dockets, it is argued in their favor, apparently in answer to practitioners, that: "It should result in less technicality in decisions since trial judges are closer to trial problems." But where is there any objective evidence to support this conclusion?

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¹ P. 46.

² P. 119.

³ P. 220.

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